

APPENDIX

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM—1976

Nos. 76-180, 76-183, 76-5193 and 76-5200

J. HENRY SMITH, individually and as administrator of the NEW YORK
HUMAN RESOURCES ADMINISTRATION, *et al.*,

Appellants-Defendants,

v.

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND
REFORM, etc., *et al.*,

Appellees.

BERNARD SHAPIRO, individually and as Executive Director of the New
York State Board of Social Welfare, *et al.*,

Appellants-Defendants,

v.

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND
REFORM, etc., *et al.*,

Appellees.

NAOMI RODRIGUEZ, etc., *et al.*,

Appellants-Intervenors,

v.

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND
REFORM, etc., *et al.*,

Appellees.

DANIELLE and ERIC GANDY, etc., *et al.*,

Appellants-Plaintiffs,

v.

ORGANIZATION OF FOSTER FAMILIES FOR EQUALTY AND
REFORM, etc., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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APPENDIX

Relevant Docket Entries

Docket

- 1 5- 9-74 Filed Complaint and issued summons.
- 2 5-13-74 Filed pltf's affdvt. and Order to Show Cause for a THREE-JUDGE-Court and why defendants should not be enjoined. Defendants are temp. restrained from removing Eric and Danielle Gandy from the home of Madeline Smith. Posting of Security is waived.—ret. 5-17-74 at 2 PM in Room 512—Carter, J.
- 3 5-23-74 Filed pltf's. affdt. and notice of motion for an order joining Ralph and Christine Goldbert (sic.) on their own behalf and as next friend for Rafael Serrano as pltf's. in this section (sic.) ret. on: May 31, 1974.
- 5 5-31-74 Filed stip. and order that the T.R.O. issued on 5-9-74 be continued until determination of pltf's motion to convene a three-judge court and if motion is granted until the hearing before such a three-judge court: counsel for deft. Dumpson, Beine & Dall to not appose pltf's' motion to join as plaintiffs Ralph and Christine Goldberg on their own behalf and as next friend of Rafael Serrano—the return of pltf's' motion is adj. to 6-5-74—Carter, J.
- 3 6- 5-74 Filed memo endorsed on pltf's motion to join parties: Motion granted by consent. So ordered—Carter, J. m/n

*Relevant Docket Entries**Docket #*

- 9 6-25-74 Filed affdvt. and notice of motion on behalf of Naomi Rodriguez, Rosa Diaz, Mary Robins and Dorothy Nelson Shabazz to intervene—ret. 7-24-74
- 12 7- 5-74 FILED SECOND AMENDED COMPLAINT
- 14 7- 9-74 Filed order designating in addition to Judge Carter, to hear and determine said cause as provided by law: Edward Lombard, C.J. and Milton Pollack, D.J.—Kaufman, Ch.J., C.A. m/n
- 16 7-15-74 Filed pltf's affdvt. and ORDER TO SHOW CAUSE why an order should not be entered granting pltf. preliminary injunction against defts. Order that pending the hearing and determination of this motion, that Joseph D'Elia be temporarily restrained from removing Cheryl, Patricia, Cynthia, and Cathleen Wallace from the home of Dorothy and George Lhotan, and it is further ordered that posting of security is waived—personal service by 7-8-74 at 12 noon.—ret. 7-18-74 at 10 AM in Room 310—Carter, J.
- 31 8-14-74 Filed pltf's affdvt. and notice of motion for class action.*

* All motions were contested unless otherwise noted.

*Relevant Docket Entries**Docket #*

- 33 8-19-74 Filed order that plaintiffs' motion for the convening of a three-judge court pursuant to 28: 2281 and 2284 is granted; ordered that pltf's motion to join Dorothy and George Lhotan, and Cheryl, Patricia, Cynthia and Cathleen Wallace as parties plaintiff, and Joseph D'Elia, Commissioner of the Nassau County Department of Social Services, Bernard Shapiro, Executive Director of the N.Y. State Board of Social Welfare, and Abe Lavine, Commissioner of the State Department of Social Services as parties defendant is granted; ordered that deft. Joseph D'Elia be restrained from removing Cheryl, et al. from the home of Dorothy and George Lhotan, pending hearing before the three-judge court and a determination of pltf's motion for a preliminary injunction. Further ordered that the motion of Naomi Rodriguez, Rosa Diaz, Mary Robins and Dorothy Nelson Shabazz to intervene as defendants is granted solely for the purpose of litigating the issues contained in pltf's 2nd amended complaint; . . . —Carter, J. m/n
- 36 9-24-74 Filed ANSWER of defendants Bernard Shapiro, indiv. and in his capacity as Executive Director of the N.Y. State Board of Social Welfare and Abe Lavine, indiv. and in his capacity as Commissioner of the N.Y. State Dept. of Social Services.

*Relevant Docket Entries**Docket #*

- 37 10-15-74 Filed plaintiff's affdvt. and notice of motion to declare N.Y. Social Services Law §§ 383(2) and 400 and Title 18, N.Y. Codes Rules and Regulations §450.14 (now re-numbered §450-10) unconstitutional, etc.—ret. 10-29-74 at 4:00 PM.
- 42 10-17-74 Filed Notice of Motion for leave to join as additional party intervenor deft. and to amend Answer.
- 43 10-17-74 Filed Motion of Intervenor Defendants to certify class.
- 46 10-25-74 Filed Defts Lavine and Shapiro's Affdvt. & Notice of Motion for judgment on pleadings.
- 51 11- 8-74 Filed Plntfs Affdvts. and Order to Show Cause for hearing on plntfs Rule 17(c) Motion.
- 59 12-11-74 Filed Opinion 41563 of Carter, J., denying motions to continue N.Y.C.L.U. as counsel to foster children or to appoint Dr. Kenneth Clark as guardian ad litem to children. Court affirms Ms. Battenwieser as independent counsel to children.
- 62 12-31-74 Filed by Attorneys Marcia Robinson Lowry and Peter Bienstock notice of appeal to the USCA for the 2nd Circuit from

*Relevant Docket Entries**Docket #*

- order of 12-11-74, disqualifying counsel to the plaintiffs herein from further representation of plaintiffs Rafael Serrano, Danielle and Eric Gandy, and Cheryl, Cynthia, Patricia and Cathleen Wallace, copies mailed to Helen L. Battenwieser, Esq., Stanler Kator, Esq., Elliot Hoffman, Esq., Jack Olchin, Esq., Louise Ganz, Esq.
- 64 1- 3-75 Filed by pltfs' Foster Children Danielle and Eric Gandy, Raphael Serrano and all other children similarly situated for an order (a) desolving restraining order (b) terminating the effect of a stip. entered into in lieu of a stay which presently prevents the Catholic Guardian Society and the N.Y. City Department of Social Service from making a determination concerning the named plaintiff children who are their responsibility, etc.—ret. 1-10-75.
- 73 2-28-75 Filed order that the trial of the THREE-JUDGE COURT be held on 3-3-75 at 10 AM—Carter, J. m/n by chambers.
- 74 3- 5-75 Filed true copy of USCA stip. and order that the appeal dated 12-31-74 is hereby withdrawn without prejudice.
- 84 6-25-75 Filed Transcript of record of proceedings, dated March 3, 1975.

*Relevant Docket Entries**Docket #*

- 89 10- 1-75 Filed deposition of deft. by Retta Friedman—dated 4-1-75 m/n.
- 90 10- 3-75 Filed deposition of Dr. Joel Kovel on April 2, 1975.
- 91 10- 3-75 Filed deposition of Eugene A. Weinstein, Ph.D. as a witness on March 18, 1975.
- 92 10- 3-75 Filed deposition of Henry Grunebaum on April 10, 1975.
- 93 10- 3-75 Filed deposition of David Fanshel on April 8, 1975.
- 94 10- 3-75 Filed continued deposition of David Fanshel on May 12, 1975.
- 96 10- 9-75 Filed examination of defts Mary Jane Brennan dated 4-9-75. m/n
- 98 12-22-76 (sic) Fld Deposition of Joseph Goldstein taken on 4-1-75.
- 99 3-22-76 Fld Opinion No. 44102. . . . From U.S. District Court. . . . In summ., therefore, we conclude that N.Y. Social Services Law S S 383(2) and 400, and N.Y.C.R.R. S 450.14, as presently operated, unduly infringe the constitutional rights of foster children. Defts are enjoined from removing any foster children in the certified class from the foster homes in which they have been placed un-

*Relevant Docket Entries**Docket #*

- less and until they grant a pre removal hearing in accord with the principles set forth above. Of course, our decision today does not in any way limit the authority of the State to act summarily in emergency situations. Family Court Act S 1021. . . . So Ordered. . . . Lumbard, C.J. & Carter, J.
mn
- 100 3-22-76 Fld Dissenting Opinion No. 44104. . . . I would dismiss the complt. . . . Pollack, J.
mn Amended 3-25-76
- 101 3-22-76 Fld Opinion No. 44103. . . . In sum, the motions to certify a class of plttf foster parents, plttf foster children, and intervenor-deft. natural parents are granted. Intervenors' motion to amend their complt is granted except for affirmative defenses 14 & 15 and the cross-claim, which are not allowed; and the intervenors' motion to join an add'l pty is granted. So Ordered. . . . Carter, J. mn
- 102 3-29-76 Filed amended Opinion No. 44102 concluding that N.Y.S.S.L. §§ 383(2) and 400 and N.Y.C.R.R. § 450.14 as presently operated, unduly infringe the constitutional rights of foster children and enjoining defts from removing foster children unless and until preremoval hearing is granted.

*Relevant Docket Entries**Docket #*

- 103 4-14-76 Filed Order & Judgment holding N.Y. Soc. Services Law §§ 383(2) and 400, and N.Y.C. R.R. § 450.14 unconstitutional; stay of effective date of Order and Judgment for 30 days to permit application to Justice of Supreme Court of U.S. for further stay pending appeal to the Supreme Court.
- 107 5-25-76 Filed plntfs' Notice of Motion for order substituting new counsel for plntf foster children. w/memo endorsed.
- 110 5-26-76 Filed order from Supreme Court of U.S. that judgment of U.S.D.C. of 4-14-76 be stayed pending referral to and further order of the county.
- 115 6-10-76 Filed L.J. Lefkowitz, Atty. Gen. of State of N.Y., atty. for defts Shapiro & Lavine's Notice of Appeal to the Supreme Court of U.S. from 4-14-76 to Order and Judgment.
- 116 6-17-76 Filed Infant plntf's Notice of Appeal to U.S. Supreme Court, from 4-14-76 U.S.D.C. Order.
- 117 6-10-76 Filed Intervenor Defts' Notice of Appeal to the Supreme Court of U.S. from 4-14-76 U.S.D.C. Order.
- 118 6-9-76 Filed Deft New York City's Notice of Appeal to Supreme Court of U.S. from 4-14-76 U.S.D.C. Order.

*Relevant Docket Entries**Docket #*

- 119 7-16-76 Filed plaintiff's Notice of Appeal to U.S. C.A. from opinion & order ent. 6-29-76 denying plaintiff foster parents' motion to substitute new counsel for foster children.
- 125 9-27-76 Filed true copy of Order from U.S.C.A. granting Intervenor Defts' motion to dismiss appeal from U.S.D.C. and to stay briefing schedule.
- 126 9-27-76 Filed true copy of State Defendant's Order from U.S.C.A.
- 127 10-19-76 Filed true copy of Order from Supreme Court of U.S. re: Consolidation from Appeal.
- 128 10-19-76 Filed true copy of above Order.
- 129 10-19-76 Filed true copy of above Order.
- 130 10-19-76 Filed true copy of above order.
- 131 Stipulation to replace items filed but missing from docket and/or record
- 133 Deposition of Laura Mae Thomas filed September 22, 1975
- 134 Deposition of Seymour Shapiro filed September 22, 1975
- 135 Deposition of Dr. Stella Chess, with exhibit filed September 22, 1975

*Relevant Docket Entries**Docket #*

- 136 Deposition of Sydney Smerzak filed September 22, 1975
- 137 Deposition of Albert Solnit filed September 22, 1975
- 138 Continued Deposition of Albert Solnit filed September 22, 1975
- 139 Deposition of Shirley Jenkins filed October 3, 1975
- 142 Order to Show Cause of March 26, 1976
- 143 Defts Shapiro Notice and Proposed Order and Judgment
- 144 Deft Smith's Proposed Order and Judgment with Affidavit of April 8, 1976 including motion to reargue.
- 146 Intervenor-defts' proposed order and Affidavit of April 5, 1976 including motion to reargue.
- 148 Deposition of Robert Catalano taken April 14, 1975
- 149 Deposition of Peter Mullaney taken April 14, 1975
- 151 Clerk's Certificate

Second Amended Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2010 RLC

CLASS ACTION

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM; MADELINE SMITH, on her own behalf and as next friend of DANIELLE and ERIC GANDY; and RALPH and CHRISTIANE GOLDBERG, on their own behalf and as next friend of RAFAEL SERRANO, on behalf of themselves and all others similarly situated,

Plaintiffs,

—against—

JAMES DUMPSON, individually and as Administrator of the NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; ELIZABETH BEINE, individually and as Director of the NEW YORK CITY BUREAU OF CHILD WELFARE, and as Acting Assistant Administrator of New York City SPECIAL SERVICES FOR CHILDREN; ADOLIN DALL, individually and as Director of the DIVISION OF INTER-AGENCY RELATIONSHIPS of the BUREAU OF CHILD WELFARE; and JAMES P. O'NEILL, individually and as Executive Director of CATHOLIC GUARDIAN SOCIETY OF NEW YORK,

Defendants.

Second Amended Complaint

1. This is a class action for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202 to protect and redress rights guaranteed by the Fourteenth Amendment. In this action, plaintiffs and members of their class seek a declaration that New York Social Services Law §§ 383 (2) and 400 on their face and as applied violate the due process and equal protection clauses of the Fourteenth Amendment and an injunction against their continued application, and a declaration that the procedures for removing children from foster homes as contained in 18 NYCRR 450.14, and as applied by defendants, violate the rights of plaintiffs and members of their class to due process of law and equal protection of the law as guaranteed by the Fourteenth Amendment, and an injunction against the removal of children from the homes of foster parents in violation of the Fourteenth Amendment.

JURISDICTION

2. This being an action to redress the deprivation under color of state law of rights, privileges and immunities guaranteed by the United States Constitution, jurisdiction is conferred on this court by 28 U.S.C. § 1343 (3) and (4).

THREE-JUDGE COURT

3. A three-judge court should be convened in accordance with 28 U.S.C. § 2281 et seq. since plaintiffs seek to enjoin defendants from acting in accordance with New York Social Services Law §§ 383 (2) and 400, statutes of state-wide application, and 18 NYCRR 450.14, a regulation of state-wide application, on the ground that said statutes

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and regulation are unconstitutionally vague on their face and, both on their face and as applied, deny plaintiffs and members of their class due process and equal protection of the law in violation of the Fourteenth Amendment.

CLASS ACTION ALLEGATIONS

4. Plaintiffs bring this action as a class action under Federal Rules of Civil Procedure 23(a), 23(b) (1) (A), 23(b) (1) (B), and 23(b) (2). Defendants have acted on grounds generally applicable to the class, thereby making injunctive and declaratory relief appropriate with respect to the class.

5. There are four sub-classes represented by plaintiffs. All of them involve foster families which have been together for more than one continuous year, and which are in jeopardy of being separated and the children moved elsewhere in violation of their rights to equal protection and due process of law, as guaranteed by the Fourteenth Amendment.

6. Plaintiff Madeline Smith represents the sub-class of foster parents who are under the supervision of authorized child-care agencies. Plaintiffs Ralph and Christiane Goldberg represent the sub-class of foster parents who are under the direct supervision of a public welfare district. Plaintiff Organization of Foster Families for Equality and Reform represents both of these sub-classes, which on information and belief contain well over a thousand members, viz., all those foster parents who have had continuous care and custody of foster children for more than one year, either through an authorized agency or under the direct supervision of a public welfare district.

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7. Plaintiffs Danielle and Eric Gandy, who appear in this action by their foster mother and next friend Madeline Smith, represent the sub-class of foster children under the supervision of authorized child-care agencies, and who have lived in one foster home for more than one year. Plaintiff Rafael Serrano who appears in this action by his foster parents and next friends Ralph and Christiane Goldberg, represents the sub-class of foster children under the direct supervision of a public welfare district. Both of the sub-classes contain, on information and belief, well over a thousand members, viz., all those foster children who have lived in one foster home for more than one year, either under the supervision of an authorized agency or under the direct supervision of a public welfare district.

8. The number of individuals in each of these sub-classes is too numerous to make joinder practicable.

9. Plaintiffs will fairly and adequately represent the interest of the class in the present action. All plaintiffs are represented by attorneys associated with the New York Civil Liberties Union, a privately funded organization, with resources and experience in the area of constitutional litigation.

10. Plaintiffs' claims are typical of the claims of the class. Plaintiffs Madeline Smith, Ralph and Christiane Goldberg, and O.F.F.E.R. represent all those foster parents who have taken homeless, dependent children who are in the custody of public welfare officials, either directly or through authorized agencies, into their homes, who have brought up these children for years, and who are in jeopardy of having these children summarily removed pursuant to statutes and a state regulation, New

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York Social Services Law §§ 383 (2) and 400, and 18 NYCRR 450.14, which violate their constitutional rights to due process and equal protection of the law. Plaintiffs Eric and Danielle Gandy and Rafael Serrano represent all those dependent New York children who are the legal responsibility of public welfare officials, either directly or through authorized agencies, who have been placed in stable, loving foster homes, and who are in jeopardy of losing what has become their family through the arbitrary, standardless procedures authorized by New York Social Services Law §§ 383 (2) and 400, and 18 NYCRR 450.14, in violation of their constitutional rights to due process and equal protection of the law.

11. There are questions of law and fact common to all members of class in this action, in that defendants Dumpson, Beine, Dall and O'Neill have the statutory authority to and do remove foster children from the homes of foster parents in violation of both of these groups' rights to due process and equal protection of the law as guaranteed by the Fourteenth Amendment.

12. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and an adjudication with regard to plaintiffs' constitutional claims would as a practical matter be dispositive with regard to other members of the class. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiffs know of no interest of members of the class in individually controlling separate actions. Plaintiffs know of no difficulties likely to be encountered in the management of a class action.

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PLAINTIFFS

13. The Organization of Foster Families for Equality and Reform is a downstate New York organization of foster parents with a membership of approximately 250 persons. It is a member of the New York state-wide coalition of parent organizations which includes over 2,000 persons. O.F.F.E.R. was organized to provide forums for foster parents to discuss common problems with respect to their relationship with the public officials and child-care agency representatives under whose authorization they receive foster children, and to gather and present information with regard to foster parents' rights.

14. Plaintiff Madeline Smith is a 53-year-old widow who lives in East Elmhurst, New York. She became an approved foster parent under the supervision of Catholic Guardian Society of New York in 1969. On February 1, 1970, she took Eric and Danielle Gandy into her home as foster children, where they have lived and been cared for continually for the past four years.

15. Plaintiffs Eric Gandy, who is eight years old, and Danielle Gandy, who is six years old, appear in this action by their foster mother and next friend, Madeline Smith. Both Danielle and Eric were placed in the custody of the Commissioner of Social Services on April 26, 1968. They were placed in Mrs. Smith's home on February 1, 1970, by Catholic Guardian Society of New York, and have not seen their natural mother at least since that date. Both Danielle and Eric call Mrs. Smith "Mommy."

16. Plaintiffs Ralph and Christiane Goldberg own their own home in Brooklyn. Mr. Goldberg is a hospital ad-

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ministrator. As authorized foster parents directly under the supervision of the Bureau of Child Welfare, they took Rafael Serrano into their home on July 11, 1969, where he has lived as a member of their family for the past five years.

17. Plaintiff Rafael Serrano, who is 11 years old, appears in this action by his foster parents and next friends, Ralph and Christiane Goldberg. On information and belief, he has been in the custody of the Commissioner of Social Services since 1968, when his parents signed a voluntary consent for placement after an abuse report had been filed against him. He has lived with Mr. and Mrs. Goldberg longer than he has lived any place else in his life.

18. Defendant James Dumpson is the duly appointed Administrator of the Human Resources Administration of the City of New York and as such is responsible for the administration of the New York City welfare district. New York Social Services Law § 395 et seq. specifically mandates that the official in charge of the local public welfare district is responsible for all children within his district who are in need of care and assistance.

19. Defendant Elizabeth Beine is an agent of defendant Dumpson and was at the time this action was filed Acting Assistant Administrator of Special Services for Children, an agency within the New York City Human Resources Administration responsible for providing services for all children in need of care in New York. She is also Director of the Bureau of Child Welfare, a division within Special Services for Children.

20. Defendant Adolin Dall is an agent of defendants Dumpson and Beine and is Director of the Division of

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Inter-Agency Relationships of the Bureau of Child Welfare which, upon information and belief, is directly responsible for the supervision of all authorized child-care agencies which serve New York City children.

21. Defendant James P. O'Neill is Executive Director of Catholic Guardian Society of New York, a child-care agency authorized by the New York State Board of Social Welfare to provide services for children and to receive children for placement from the public welfare district administrator. Upon information and belief, Catholic Guardian Society of New York receives over 90 percent of its funding from the City of New York, is subject to state and city regulations and supervision, and acts under color of state law.

STATEMENT OF CLAIM

Mrs. Smith and Eric and Danielle Gandy

22. Upon information and belief, in 1969, plaintiff Madeline Smith became approved as a foster parent by the Catholic Guardian Society of New York, a child-care agency operated by defendant O'Neill under the supervision of defendant Dumpson and his agents.

23. At that time, upon information and belief, Mrs. Smith told the Catholic Guardian Society social worker, Mrs. Armstrong, that she wanted foster children who had no family at all, because she would like to adopt them. Mrs. Smith told Mrs. Armstrong that she had arthritis, which made her unable to work, but she said, upon information and belief, that she was capable of caring for children and was anxious to do so because her own daughter had died.

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24. Upon information and belief, Mrs. Armstrong told Mrs. Smith that Catholic Guardian Society had two children they would like to place with her, Eric and Danielle Gandy. Upon information and belief, Mrs. Armstrong told her that only Danielle was adoptable because Eric was retarded, but that the agency was anxious to keep the children together because they were the only family each of them had. Mrs. Smith said she would take both children.

25. On February 1, 1970, Eric and Danielle Gandy went to live with Mrs. Smith, where they have lived ever since.

26. Upon information and belief, Eric and Danielle Gandy are legally free for adoption. Upon information and belief, Danielle has never seen her natural mother, Eric does not remember her, and both of them regard Mrs. Smith as their mother.

27. Upon information and belief, Mrs. Smith has repeatedly made known her desire to adopt the children to workers at the Catholic Guardian Society.

28. Upon information and belief, defendant O'Neill and his agents have arbitrarily decided to remove Eric and Danielle Gandy from Mrs. Smith's home. On information and belief, defendants Dumpson, Beine, Dall and their agents have approved defendant O'Neill's decision to remove Eric and Danielle Gandy from Mrs. Smith's home.

29. Upon information and belief, Mrs. Smith has been notified of this decision, but has not received any notice of the reasons upon which the decision has been based. Nor has Mrs. Smith been given an opportunity to challenge these reasons in a hearing.

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30. Upon information and belief, Mrs. Dillon, an employee of Catholic Guardian Society and an agent of defendant O'Neill's, brought Mrs. Smith a letter dated March 29, 1974, a copy of which is annexed hereto as Exhibit A, notifying her that Eric and Danielle would be removed from her home on April 24, 1974. The only reason for the pending removal stated in the letter is: "To continue to plan for Eric and Danielle, it is now in their best interests to leave your home on or about April 24."

31. Upon information and belief, the letter given to Mrs. Smith is a printed form letter routinely used by defendant O'Neill as the only notice to foster parents of the pending removal of foster children from their foster homes. The only blanks to be filled in on the form are the names of the foster parents and the children, the date of the letter and the date on which the children are to be removed. The statement quoted in paragraph 30 is part of the printed form, with the exception of blanks for the children's names and the removal date.

32. Upon information and belief, the only opportunity for a hearing that has been afforded to Mrs. Smith was contained in the following statement in the form letter: "In the event that you wish to waive the ten days' notice usually given to a foster parent before removing a child just check this box, sign below, and return this letter to me. However, if you have have serious questions about this plan, it is your right to request a conference with a public official. The Public Official will review with you the reasons for the decision; and you can give your reasons for requesting the conference."

33. Upon information and belief, the conference referred to in the letter does not satisfy the most minimal

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due process rights, in that there are no written standards or guidelines concerning the conference itself, there are no written standards or guidelines by which to judge the appropriateness of the agency's removal decision, the foster parent is not entitled to a written statement specifying the basis for the agency's decision, the foster parent is not entitled to confront and question those persons supplying the facts, if any, upon which the agency decision has been made, and the foster parent is not entitled to bring her own witnesses.

34. Upon information and belief, Mrs. Dillon brought Mrs. Smith the letter told her to check a box and sign the letter, and told her that she had not waived any rights to a review of the agency's decision to remove the children. Upon information and belief, Mrs. Smith was denied even this legally insufficient conference since her alleged waiver of the conference was an uninformed waiver.

35. Upon information and belief, defendants O'Neill and his agents, and defendants Dumpson, Beine, and Dall have decided to and plan to remove Eric and Danielle Gandy permanently from Mrs. Smith's home on May 10, 1974.

36. Upon information and belief, the procedure followed by defendant O'Neill and his agents, with regard to notification to Mrs. Smith of the planned removal of her foster children is regularly followed by defendant O'Neill's agents with regard to other foster parents and children over whom they have control.

37. Upon information and belief, this procedure is followed and carried out with the full knowledge and cooperation of and acting in concert with and under the au-

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thority of defendants Dumpson, Beine, and Dall and their agents.

38. All actions of defendant O'Neill and his agents alleged in this complaint are and have been carried out under color of state law. Catholic Guardian Society of New York, of which defendant O'Neill is Executive Director, is a child-care agency authorized, approved and regulated by New York state law, and supervised by state and city public officials. Upon information and belief, it receives over 90 percent of its funding from the City of New York, and the acts as an agent of the city with regard to those children including Eric and Danielle Gandy, whom the city has referred to Catholic Guardian Society for placement. Upon information and belief, a substantial portion of the money Catholic Guardian Society receives from the City of New York is reimbursed to the city from the federal government as Aid to Families of Dependent Children payments under Title IV-A of the Social Security Act.

39. Upon information and belief, this procedure, or procedures substantially similar, are followed and carried out by other child-care agencies under the control and supervision of defendants Dumpson, Beine, and Dall and their agents with the full knowledge and cooperation of said defendants.

40. Upon information and belief, notification of the availability of an administrative conference, held pursuant to 18 NYCRR 450.14, is frequently carried out by defendant O'Neill and waivers obtained, without said waivers being informed waivers, and without the notified foster parents being fully informed of and aware of their rights.

Second Amended Complaint

41. Upon information and belief, notification of the availability of an administrative conference held pursuant to 18 NYCRR 450.14 is made in a substantially similar way by other child-care agencies under the control and supervision of defendants Dumpson, Beine, and Dall and their agents, and with their full knowledge and cooperation.

Mr. and Mrs. Goldberg and Rafael Serrano

42. Mr. and Mrs. Goldberg are authorized foster parents under the direct supervision of defendants Dumpson and Beine. They took Rafael Serrano into their home on July 11, 1969, when he was six years old.

43. On information and belief, Rafael had lived in several other homes before he came to live with Mr. and Mrs. Goldberg in 1969, and had been severely abused by his parents during the time he lived with them.

44. Upon information and belief, when Rafael was placed with Mr. and Mrs. Goldberg by the Bureau of Child Welfare in 1969, the worker told them that he was brain damaged, retarded and hyperactive. Upon information and belief, they were told that if they didn't take the six-year-old boy at that time, the Bureau of Child Welfare would place him in a state hospital.

45. Upon information and belief, when Rafael first came to live with Mr. and Mrs. Goldberg, he was a very disturbed, unhappy child who threatened to tear apart their home and their own three-year-old daughter. A doctor who saw Rafael at that time described him as being paralyzed by anxiety.

Second Amended Complaint

46. Upon information and belief, the Bureau of Child Welfare worker told Mr. and Mrs. Goldberg shortly after they took Rafael that they should not feel bad about returning him to the agency since his record showed an inability to adjust to a family setting. Upon information and belief, the agency worker said the alternative to the Goldbergs' home for Rafael would be an institution.

47. Rafael has lived with Mr. and Mrs. Goldberg and their daughter for the last five years as a member of their family. He is now doing well in school, and has made friends in their community.

48. Mr. and Mrs. Goldberg have been commended repeatedly by employees and agents of defendants Dumpson and Beine for doing an admirable job in raising Rafael.

49. Rafael's parents have not seen the boy in well over a year and, upon information and belief, have made no attempts to have their son returned to them. Upon information and belief, all of their six children are in foster care and the Bureau of Child Welfare has recommended adoption for two of them.

50. Upon information and belief, the Bureau of Child Welfare worker in charge of Rafael's case, Robert Tobing, has recommended that Rafael be taken from his home with Mr. and Mrs. Goldberg within the next few months and given to an aunt whom Rafael has visited only once.

51. Upon information and belief, the aunt to whom the agency plans to give Rafael does not want to take him from the Goldbergs' home and does not want to bring him up.

Second Amended Complaint

52. Upon information and belief, Mr. and Mrs. Goldberg have not been notified directly of the Bureau of Child Welfare's decision to remove Rafael from their home, nor do they know any reason why such an action should be taken.

53. Upon information and belief, the Bureau of Child Welfare is working toward removing Rafael from his home with Mr. and Mrs. Goldberg, by attempting to set up visits between Rafael and his aunt so they can get to know each other before Rafael is to be moved. Such visits in the context of a planned move are subjecting Rafael and Mr. and Mrs. Goldberg to severe anxiety and uncertainty.

54. Upon information and belief, these actions of defendants Dumpson, Beine and their agents, to begin to effectuate a plan to remove a child from a home he has made with his foster parents, without adequate notice of the planned removal and without stating the reasons for such a removal, are carried out in a substantially similar way with regard to other foster parents and children under the direct supervision and control of the Bureau of Child Welfare, and with the full knowledge and cooperation of defendants Dumpson and Beine.

55. Under 18 NYCRR 450.14, Mr. and Mrs. Goldberg are only entitled to notification that Rafael is to be removed from their home 10 days prior to the date of the actual removal.

56. When they are thus notified, they have a right to request a conference with an agent and employee of the Bureau of Child Welfare, prior to the removal, pursuant to 18 NYCRR 450.14.

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57. Upon information and belief, the costs of the foster care program under the direct supervision of the Bureau of Child Welfare, in which Mr. and Mrs. Goldberg are authorized foster parents, are substantially reimbursed by the federal government as Aid to Families of Dependent Children payments under Title IV-A of the Social Security Act.

New York City Revised Procedure

58. Subsequent to the filing of this action, defendant Dumpson and his agents promulgated a document entitled "Human Resources Administration Inter-Office Memorandum, Subject: Administrative Removal of Foster Children," dated June 25, 1974, setting forth procedural changes with regard to the removal of New York City foster children from foster homes under certain circumstances.

CAUSES OF ACTION

59. The notification procedure described above in paragraphs 29 through 41 violates the right of plaintiff Smith and foster parents who are members of her class not to be deprived without due process of law of the fundamental right to establish a home and bring up children and to enjoy those privileges long recognized as essential to the pursuit of happiness and liberty encompassed within the Fourteenth Amendment.

60. The notification procedure contained within the New York City procedure referred to in paragraph 58 above violates the rights of plaintiffs Smith and Ralph and

Second Amended Complaint

Christiane Goldberg and members of their class not to be deprived without due process of law of the fundamental right to establish a home and bring up children and to enjoy those privileges long recognized as essential to the pursuit of happiness and liberty encompassed within the Fourteenth Amendment.

61. The plan and the attempts by agents of defendants Dumpson and Beine to begin implementation of their decision to remove Rafael Serrano from his home with Mr. and Mrs. Goldberg, prior to notification that the child is to be removed, violates the right of plaintiffs Ralph and Christiane Goldberg not to be deprived without due process of law of the fundamental right to establish a home and bring up children and to enjoy those privileges long recognized as essential to the pursuit of happiness and liberty encompassed within the Fourteenth Amendment.

62. New York Social Services Law § 383 (2), which authorizes defendant O'Neill and his agents, with the knowledge, authorization and encouragement of defendants Dumpson, Beine and Dall, to remove Eric and Danielle Gandy from Mrs. Smith's home and which authorizes defendants Dumpson and his agents to remove Rafael Serrano from Ralph and Christiane Goldberg's home provides:

"The custody of a child placed out or boarded out and not legally adopted or for whom legal guardianship has not been granted shall be vested during his minority, or until discharged by such authorized agency from its care and supervision, in the authorized agency placing out or boarding out such child and any such authorized agency may in

Second Amended Complaint

its discretion remove such child from the home where placed or boarded."

63. Said statute is unconstitutionally vague and fails to set standards in violation of the rights of plaintiffs Smith and Ralph and Christiane Goldberg and foster parent members of their class not to be deprived of their fundamental rights to establish a home, bring up children and to enjoy those privileges long recognized as essential to the pursuit of happiness and liberty encompassed within the due process guarantee of the Fourteenth Amendment.

64. Said statute is unconstitutionally vague and fails to set standards in violation of the rights of plaintiffs Eric and Danielle Gandy and Rafael Serrano and other foster children in their class to those fundamental rights and privileges long recognized as assential to the pursuit of happiness and liberty encompassed within the due process guarantee of the Fourteenth Amendment.

65. The statute, New York Social Services Law § 400, which authorized defendants Dumpson and Beine and their agents to remove Rafael Serrano from the home of Ralph and Christiane Goldberg, provides:

"When any child shall have been placed in an institution or in a family home by a commissioner of public welfare or a city public welfare officer, the commissioner or city public welfare officer may remove such child from such institution or family home and make such disposition of such child as is provided by law.

"Any person aggrieved by such decision of the commissioner of public welfare of city welfare of-

Second Amended Complaint

ficer may appeal to the department, which upon receipt of the appeal shall review the case, shall give the person making the appeal an opportunity for a fair hearing thereon and within thirty days render its decision. The department may also, on its own motions, review any such decision made by the public welfare official. The department may make such additional investigation as it may deem necessary. All decisions of the department shall be binding upon the public welfare district involved and shall be complied with by the public welfare officials thereof."

66. Said statute is unconstitutionally vague and fails to set standards in violation of the rights of plaintiffs Ralph and Christiane Goldberg and foster parent members of their class not to be deprived of their fundamental rights to establish a home, bring up children and to enjoy those privileges long recognized as essential to the pursuit of happiness and liberty encompassed within the due process guarantee of the Fourteenth Amendment.

67. Said statute is unconstitutionally vague and fails to set standards in violation of the rights of plaintiff Rafael Serrano and members of his class to those fundamental rights and privileges long recognized as essential to the pursuit of happiness and liberty encompassed within the due proceses guarantee of the Fourteenth Amendment.

68. The facial constitutional infirmity of New York Social Services Law §§ 383(a) and 400 is further compounded by the absence of any state regulations which set standards by which these statutes are to be applied,

Second Amended Complaint

in violation of the due process rights of plaintiffs and members of their class.

69. The facial constitutional infirmity of Social Services Law § 383 (2) is further compounded by the fact that this unfettered discretion, which is exercised in the absence of any state regulations setting standards, is given to employees and agents of voluntary child-care agencies, who act under color of state law but are not under the control of public officials, in violation of the right of plaintiffs Madeline Smith and Eric and Danielle Gandy and members of their class to due process and equal protection of the law.

70. New York Social Services Law § 400, which provides a foster parent aggrieved by a decision to remove a foster child from his or her home with the right to a fair hearing subsequent to the removal of the child, extends only to foster parents under the direct supervision of a public welfare official. On its face, this statute deprives plaintiffs Madeline Smith and Eric and Danielle Gandy and members of their class, who are foster parents and foster children under the direct supervision of a voluntary child-care agency, of equal protection of the law in violation of their constitutional rights.

71. On its face, 18 NYCRR 450.14(a) (b) and (c) insofar as it provides an administrative conference without mandating even minimal due process safeguards and standards prior to the removal of foster children from foster homes, violates the constitutional rights of plaintiffs Madeline Smith and Eric and Danielle Gandy, and Ralph and Christiane Goldberg, and members of their

Second Amended Complaint

class not to be deprived of liberty or fundamental rights without due process of law.

72. As applied by defendants, 18 NYCRR 450.14 (a) (b) and (c) insofar as it provides an administrative conference prior to the removal of foster children from foster homes without constitutionally adequate due process safeguards, violates the constitutional rights of plaintiffs and members of their class not to be deprived of liberty or fundamental rights without due process of law.

73. The internal procedure enacted by defendants Dumpson and his agents, dated June 25, 1974, and referred to in paragraph 58 above, is unconstitutionally vague, fails to set standards, and does not provide constitutionally adequate due process safeguards prior to the removal of foster children from foster homes, in violation of the rights of plaintiffs and members of their class not to be deprived of liberty or fundamental rights without due process of law.

74. New York Social Services Law § 400 and 18 NYCRR 450.14(c) provide that a foster family aggrieved by a decision to remove a child from its home may request a fair hearing to review the decision subsequent to the time the child is actually removed from the home.

75. The absence of a fair hearing prior to the termination of participation in a program funded by the federal government, under its Aid to Families of Dependent Children, while other recipients and beneficiaries of federal funds under Aid to Families of Dependent Children are entitled to a fair hearing prior to such a termination, under 18 NYCRR 358.8, violates the rights of plaintiff

Second Amended Complaint

foster families and foster children to equal protection of the law as guaranteed by the Fourteenth Amendment.

76. The absence of any hearing procedure which satisfies due process standards prior to the removal of foster children from homes in which they have lived for more than a year violates the rights of Eric and Danielle Gandy and Rafael Serrano and members of their class not to be subjected to irreparable harm and denied liberty and fundamental rights without due process of law as guaranteed by the Fourteenth Amendment.

77. The absence of any hearing procedure which satisfies due process standards prior to the removal of foster children from homes in which they have lived for more than a year violates the rights of Madeline Smith and Ralph and Christiane Goldberg and members of their class not to be subjected to irreparable harm and denied liberty and fundamental rights without due process of law as guaranteed by the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

(a) Grant a temporary restraining order restraining defendants O'Neill, Dumpson, Beine and Dall from removing Eric and Danielle Gandy from the home of Mrs. Madeline Smith;

(b) Convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284;

Second Amended Complaint

(c) Enter a declaratory judgment that New York Social Services Law § 383(2) is unconstitutional on its face and as applied as a violation of the due process clause of the Fourteenth Amendment;

(d) Enter a declaratory judgment that New York Social Services Law § 400 is unconstitutional on its face and as applied as a violation of the due process and equal protection clauses of the Fourteenth Amendment;

(e) Enter a declaratory judgment that the practice of defendants Dumpson and Beine and their agents of failing to provide a due process hearing prior to the removal of children from foster homes in which they have lived continuously for over one year violates the rights of foster parents and children to due process and equal protection of the law;

(f) Enter a declaratory judgment that 18 NYCRR 450.14 is unconstitutional on its face and as applied as a violation of the due process clause of the Fourteenth Amendment;

(g) Enter a declaratory judgment that the New York City Human Resources Administration internal procedure for removing foster children from foster homes is unconstitutional on its face and as applied as a violation of the due process clause of the Fourteenth Amendment;

(h) Preliminarily and permanently enjoining defendants from removing foster children from foster homes in which they have lived continuously for a period of over one year pursuant to New York Social Services Law § 383 (2);

Second Amended Complaint

(i) Preliminarily and permanently enjoin defendants from removing foster children from foster homes in which they have lived continuously for a period of over one year pursuant to 18 NYCRR 450.14;

(j) Preliminarily and permanently enjoin defendants from removing foster children from foster homes in which they have lived continuously for a period of over one year pursuant to the New York City Human Resources Administration internal procedure;

(k) Preliminarily and permanently enjoin defendants from removing foster children from foster homes in which they have lived continuously for a period of over one year without the due process safeguards of adequate and specific notice and a prior hearing which satisfy the due process requirements of the Fourteenth Amendment;

(l) Such other and further relief as this Court deems just and proper.

Respectfully submitted,

MARCIA ROBINSON LOWRY
Children's Rights Project
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011
(212) 924-7800

Attorneys for Plaintiffs

Exhibit A

CATHOLIC GUARDIAN SOCIETY
1011 FIRST AVENUE
NEW YORK, NEW YORK 10022

Telephone: 371-1000

September 21, 1973

Telephone # 478-0945

Date: 3/29/74

Re: Eric & Danielle Gandy

Mrs. Madeline Smith
23-15 101st Street
East Elmhurst, N.Y.

Dear Mrs. Smith

The care and attention you have given to the foster child(ren) in your home is greatly appreciated. This has been a service not only to the child, but to your community.

To continue to plan for Eric & Danielle, it is now in (their) best interests to leave your home on or about April 24. Should you desire any additional information, please feel free to contact me.

In the event that you wish to waive the ten day's notice usually given to a foster parent before removing a child just check this box [☒, sign below, and return this letter to me.

However, if you have serious questions about this plan, it is your right to request a conference with a public offi-

Exhibit A

cial. The Public Official will review with you the reasons for the decision; and you can give your reasons for requesting the conference. If you wish, you can bring a representative to the conference. Please let me know immediately if you wish me to arrange such a conference for you and whether you plan to bring a representative. Otherwise, I shall assume you are in agreement that the plan should be carried out.

Once again, may we thank you for your service to the New York City's children.

Sincerely yours,

JANE-ELLEN DILLON
Caseworker

(ILLEGIBLE)

(ILLEGIBLE)

MADELINE SMITH

Order Convening Three Judge Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2010

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND
REFORM, *et al.*,

Plaintiffs,

—against—

JAMES DUMPSON, *et al.*,

Defendants.

This cause having come on to be heard on plaintiffs' motion pursuant to 28 U.S.C. §§ 2281 and 2284 for the convening of a three-judge court, plaintiffs' motion to join parties pursuant to Fed. R. Civ. P. 21, plaintiffs' motion for a temporary restraining order pursuant to 28 U.S.C. § 2284(3), and the motion of Naomi Rodriguez et al. to intervene in this action pursuant to Fed. R. Civ. P. 24(a) and (b), and papers having been submitted and a hearing having been held on all the motions listed above on August 5, 1974, before the Hon. Robert L. Carter, it is

ORDERED that plaintiffs' motion for the convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 be and hereby is granted, and it is further

Order Convening Three Judge Court

ORDERED that plaintiffs' motion to join Dorothy and George Lhotan, and Cheryl, Patricia, Cynthia and Cathleen Wallace as parties plaintiff, and Joseph D'Elia Commissioner of the Nassau County Department of Social Services, Bernard Shapiro, Executive Director of the New York State Board of Social Welfare, and Abe Lavine, Commissioner of the New York State Department of Social Services as parties defendant be and hereby is granted, and further

The court having made a finding that irreparable injury will result to Cheryl, Patricia, Cynthia and Cathleen Wallace through the disruption in their lives caused by their removal from the home of Dorothy and George Lhotan, and in order to maintain the status quo with regard to these children and their foster parents, it is further

ORDERED that defendant Joseph D'Elia be restrained pursuant to 28 U.S.C. § 2284(3) from removing Cheryl, Patricia, Cynthia and Cathleen Wallace from the home of Dorothy and George Lhotan or in any way interfering with or interrupting their stay with these foster parents pending a hearing before the three-judge court, and a determination of plaintiffs' motion for a preliminary injunction and it is further

ORDERED that the motion of Naomi Rodriguez, Rosa Diaz, Mary Robins and Dorothy Nelson Shabazz to intervene as defendants in this action pursuant to Fed. R. Civ. P. 24(a) and (b) is granted solely for the purposes of litigating the issues and causes of action contained in Plaintiffs' Second Amended Complaint, and it is further

ORDERED that the cross claims of Naomi Rodriguez, Rosa Diaz, Mary Robins, and Dorothy Nelson Shabazz asserted

Order Convening Three Judge Court

in Intervenor Defendants' Answer and Cross Claim are stricken and the intervenor defendants' cross claims are disallowed.

Dated: New York, New York
August 15, 1974

ROBERT L. CARTER
United States District Judge
A True Copy

RAYMOND F. BURGHARDT,
Clerk

By: G. HARBISON
Deputy Clerk

Answer of New York State Defendants

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ 2010 RLC

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM; MADELINE SMITH, on her own behalf and as next friend of DANIELLE and ERIC GANDY; and RALPH and CHRISTIANE GOLDBERG, on their own behalf and as next friend of RAFAEL SERRANO, on behalf of themselves and all others similarly situated,

Plaintiffs,

—against—

JAMES DUMPSON, individually and as Administrator of the NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; ELIZABETH BEINE, individually and as Director of the NEW YORK CITY BUREAU OF CHILD WELFARE, and as Acting Assistant Administrator of NEW YORK CITY SPECIAL SERVICES FOR CHILDREN; ADOLIN DALL, individually and as Director of the DIVISION OF INTER-AGENCY RELATIONSHIPS of the BUREAU OF CHILD WELFARE; and JAMES P. O'NEILL, individually and as Executive Director of CATHOLIC GUARDIAN SOCIETY OF NEW YORK,

Defendants.

Defendants Bernard Shapiro, individually and in his capacity as Executive Director of the New York State

Answer of New York State Defendants

Board of Social Welfare and Abe Lavine, individually and in his capacity as Commissioner of the New York State Department of Social Services, by their attorney, Louis J. Lefkowitz, Attorney General of the State of New York, for their answer to the second amended complaint herein, on information and belief, respectfully:

First: Deny each and every allegation contained in paragraphs 2, 4, 5, 59, 60, 61, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76 and 77 of plaintiffs' second amended complaint.

Second: Admits each and every allegation contained in paragraphs 3, 18, 19, 20, 21, 31, 55, 56, 57, 58, 65 and 74 of plaintiffs' second amended complaint.

Third: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 1, 6, 8, 9, 10, 11, 12, 13, 14, 16, 22, 23, 24, 25, 26, 27, 28, 34, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 57 of plaintiffs' second amended complaint.

Fourth: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 7 of plaintiffs' second amended complaint, except denies so much of the allegations in said complaint as alleges or implies that Danielle and Eric Gandy, may be permitted to or properly appear by and be represented by their "foster mother and next friend Madeline Smith, and further deny so much of the allegations in said paragraph as alleges or implies that plaintiff Rafael Serrano may be permitted to or properly appears by his foster parents and next friends Ralph and Christiane Goldberg."

Answer of New York State Defendants

Fifth: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 15 of plaintiffs' second amended complaint, except deny so much of the allegations in said paragraph as alleges or implies that plaintiffs Eric and Danielle Gandy may properly appear or be permitted to appear in this action by their foster mother and next friend, Madeline Smith.

Sixth: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 17 of plaintiffs' second amended complaint, except deny so much of the allegations contained in said paragraph as alleges or implies that plaintiff Rafael Serrano may properly appear or be permitted to appear in this action by their foster parents and next friends Ralph and Christiane Goldberg.

Seventh: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 29 of plaintiffs' second amended complaint, except denies so much of the allegations in said paragraph as alleges that plaintiff Smith has been denied an opportunity to challenge the basis for the decision:

Eighth: Admit each and every allegation contained in paragraph 30 of plaintiffs' second amended complaint, except deny knowledge or information sufficient to form a belief as to the truth of so much of the allegations in said paragraph as alleges that letter dated March 29, 1974 was delivered by a Mrs. Dillon and that Mrs. Dillon is an employee of the Catholic Guardian Society and an agent of defendant O'Neill, and each such allegation.

Answer of New York State Defendants

Ninth: Denies so much of paragraph 32 of plaintiffs' second amended complaint as alleges or implies that the only mode of review and hearing is contained in the form paragraph of the conference with the public official, but admits that the form letter received by Mrs. Smith does contain the statement quoted in said paragraph.

Tenth: Deny so much of the allegations in paragraph 33 of plaintiffs' second amended complaint as alleges or implies that plaintiff has a right to due process prior to the removal of the foster child, that due process in any event mandates the use of a written statement specifying the basis for the agency's decision, or the right to confront and cross-examine witnesses or the right to present her own witnesses, or the use of written guidelines. Further deny so much of the allegations in said paragraph as alleges that there are no written standards or guidelines concerning the conference itself.

Eleventh: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 38 of plaintiffs' second amended complaint, except deny that defendant O'Neill and his agent are acting under color of state law.

AS AND FOR A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:

Twelfth: Under state law, children placed with agencies for placement in foster care families, remain in the custody of the agency so placing them, and are merely placed into these homes and with the parents as, in effect employees of the agency, as caretakers.

Answer of New York State Defendants

Thirteenth: At no time prior to the completion of adoption proceedings do the children so placed become permanent members of the foster family. At all times prior to the completion of adoption proceedings, if any, the placement agency is responsible for the health, safety and well-being of the children, and continues to maintain supervision over the foster families and custody of the children.

Fourteenth: At no time prior to the onset of formal adoption proceedings is it contemplated that the foster parent relationship is anything more than a temporary caretaker relationship.

AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:

Fifteenth: Upon information and belief, in none of the situations involving any of the named plaintiffs does the removal of the children from the homes of the foster parents reflect adversely upon the quality of the care provided by the foster parents or foreclose them from, in the future, again being foster parents.

Sixteenth: Upon information and belief, the foster parents are in no way deprived of either the liberty to engage in familiar relationships or is there any information of the freedom to raise their children in a manner they deem fit.

Seventeenth: There is therefore, on behalf of the foster parents no deprivation of either liberty or property and therefore no violation of their constitutional rights.

Answer of New York State Defendants

AS AND FOR A THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:

Eighteenth: Neither by way of statute or court rule do plaintiff foster parents have any standing to assert the claims, if any of the foster children, as they are neither the parents or legal guardians of the children. Moreover, such representation in an action of this kind is particularly inappropriate as the parents are interested parties who may have an interest adverse to those of the foster children.

AS AND FOR A FOURTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:

Nineteenth: The complaint fails to state a claim for which relief can be granted.

AS AND FOR A FIFTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:

Twentieth: The court lacks subject-matter jurisdiction.

WHEREFORE: Defendants Shapiro and Lavine, respectfully pray this Court enter a judgment:

(a) Denying each and every prayer for relief in plaintiffs' second amended complaint and either

(b) Dismissing the complaint; or

(c) In the alternative, entering a declaratory judgment declaring New York Social Services Law § 383(2) constitutional both on its face and as applied; and

Answer of New York State Defendants

(d) Enter a declaratory judgment declaring New York Social Services Law § 400 constitutional both on its face and as applied; and

(e) Granting such other, further and different relief that as to this Court appears just and proper.

Respectfully submitted,

LOUIS J. LEFKOWITZ

Attorney General of the
State of New York

Attorney for defendants Shapiro
and Lavine

By: STANLEY L. KANTOR

Assistant Attorney General

Office & P.O. Office Address

Two World Trade Center

New York, New York 10047

Tel. No. (212) 488-5168

**Intervenor Defendants First Amended Answer
and Cross Claim**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ 2010 RLC

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM: MADELINE SMITH, on her own behalf and as next friend of DANIELLE and ERIC GANDY; and RALPH and CHRISTIANE GOLDBERG, on their own behalf and as next friend of RAFAEL SERRANO, on behalf of themselves and all others similarly situated,

Plaintiffs,

—against—

JAMES DUMPSON, individually and as Administrator of the NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; ELIZABETH BEINE, individually and as Director of the NEW YORK CITY BUREAU OF CHILD WELFARE, and as Acting Assistant Administrator of NEW YORK CITY SPECIAL SERVICES FOR CHILDREN; ADOLIN DALL, individually and as director of the DIVISION OF INTERAGENCY RELATIONSHIPS of the BUREAU OF CHILD WELFARE and JAMES P. O'NEILL, individually and as Executive Director of CATHOLIC GUARDIAN SOCIETY OF NEW YORK,

Defendants,

*Intervenor Defendants First Amended Answer
and Cross Claim*

NAOMI RODRIGUEZ, ROSA DIAZ, MARY ROBINS, DOROTHY
NELSON SHABAZZ, on behalf of themselves and all other
persons similarly situated,

Intervenor Defendants
and Cross Claimants.

Intervenor-defendants, by their attorney Marttie Louis
Thompson (Toby Golick, Ira S. Bezoza, Louise Gans of
Counsel), answering the Second Amended Complaint
herein, on their own behalf and on behalf of all other
persons similarly situated, allege:

1. Deny the allegations in paragraphs 10, 11, 12, 33, 59,
60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76 and 77.
2. Deny the allegations in paragraph 9 of Second
Amended Complaint except admit plaintiffs are repre-
sented by attorneys from the New York Civil Liberties
Union with resources and experience in constitutional liti-
gation.
3. Lack knowledge or information sufficient to form a
belief as to Paragraphs 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 22,
23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39,
40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55,
56, 57 and 74.

*Intervenor Defendants First Amended Answer
and Cross Claim*

AS A FIRST AFFIRMATIVE DEFENSE

4. The complaint fails to state a claim against defend-
ants and intervenor-defendants upon which relief can be
granted.

AS A SECOND AFFIRMATIVE DEFENSE

5. Plaintiff foster parents and the class they purport to
represent have no constitutional right to raise and care
for foster children who have been boarded with plaintiff
foster parents by State, City and County Social Service
officials or other authorized agencies pursuant to contract
and license.

AS A THIRD AFFIRMATIVE DEFENSE

6. Under State law, foster parents must be licensed by
the local commissioner of social services before children
may be boarded in their homes; such licenses are of one
year's duration but may be renewed.

7. On information and belief plaintiff foster parents
and the class they purport to represent board children
pursuant to such foster care license.

8. On information and belief said license does not give
to plaintiff foster parents, or to members of their pur-
ported class, the right to board any specific children.

9. On information and belief the licenses of plaintiff
foster parents to board children have not been revoked.

*Intervenor Defendants First Amended Answer
and Cross Claim*

AS A FOURTH AFFIRMATIVE DEFENSE

10. On information and belief State, City and County social service officials placing out or boarding out children customarily enter into a contract with each foster parent with whom a child is boarded.

11. On information and belief standard provision of this contract is that the foster parent agrees to return any child boarded with him or her to authorized agency upon such agency's request.

12. On information and belief plaintiffs, Ralph and Christiane Goldberg, signed a contract containing such a provision with the Department of Social Services of the City of New York in connection with the boarding of the child Rafael Serrano in their home. On information and belief plaintiffs, Dorothy and George Lhotan signed a contract containing such a provision with the Children's Bureau of the Nassau County Department of Social Services.

13. Plaintiff foster parents Ralph and Christiane Goldberg, have accepted the power of the authorized agency to remove children from their home as a condition of their ability to board foster children. Plaintiff foster parents Dorothy and George Lhotan have accepted the power of the authorized agency to remove children from their home as a condition of their ability to board foster children.

AS A FIFTH AFFIRMATIVE DEFENSE

14. On information and belief a voluntary authorized agency placing out or boarding out children enters into a

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and Cross Claim*

contract with each foster parent with whom a child is boarded.

15. On information and belief a standard provision of this contract is that the foster parents agree to return any children boarded with them to the authorized agency upon such agency's request.

16. On information and belief plaintiff, Madeline Smith, signed a contract containing such a provision with the Catholic Guardian Society of New York in connection with the boarding of the children, Danielle and Eric Gandy, in her home.

17. Plaintiff foster parent, Madeline Smith, has accepted the power of the authorized agency to remove children from her home as a condition of her ability to board foster children.

AS A SIXTH AFFIRMATIVE DEFENSE

18. Neither by way of statute or court rule do plaintiff foster parents have any standing to assert the claims, if any, of the foster children, as they are neither the parents nor legal guardians of the children. Moreover, such representation in action of this kind is particularly inappropriate as the parents are interested parties who may have an interest adverse to those of the foster children.

AS A SEVENTH AFFIRMATIVE DEFENSE

19. On information and belief plaintiff foster parents have had plaintiff foster children in their homes from

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and Cross Claim*

from two to five years. Under State law foster parents who have had foster children in their homes for two years or more are given rights which foster parents who have had foster children in their homes for less than two years do not have.

20. On information and belief the significance of a child's stay in foster care for two years rather than one year may be substantial for the foster child.

21. Plaintiff foster parents lack standing to sue as foster parents who have had foster children boarded in their home for less than two years and more than one year. Similarly, plaintiff foster children lack standing to sue as children who have lived in foster homes for less than two years and more than one year. Plaintiffs claim with respect to foster parents who have had foster children boarded in their homes for less than two years and more than one year is non-justiciable or there is no case or controversy stated with respect to it because there is no plaintiff before the Court who raises that issue.

AS AN EIGHTH AFFIRMATIVE DEFENSE

22. On information and belief plaintiff foster children have been separated from their natural parents for four years or more. Plaintiff foster children lack standing to sue as children who have been separated from their parents for less than four years.

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and Cross Claim*

AS A NINTH AFFIRMATIVE DEFENSE

23. Plaintiff, Organization of Foster Families for Equality and Reform, Inc., lack standing to sue in this action.

AS A TENTH AFFIRMATIVE DEFENSE

24. Plaintiff foster children have no constitutional right to live in the home of particular foster parents with whom they were boarded by an authorized agency.

AS AN ELEVENTH AFFIRMATIVE DEFENSE

25. On information and belief a foster care review proceeding pursuant to Social Services Law section 392 to review the foster care placement of Danielle and Eric Gandy was commenced and pending in the Family Court of the State of New York, City of New York, at the time this action was commenced and plaintiff Madeline Smith is a party to said proceeding. On information and belief said foster care review proceeding is still pending undetermined in the Family Court of the State of New York, City of New York.

26. Subsequent to the filing of this action, defendant Dumpson and his agents promulgated a document entitled "Human Resources Administration Inter-Office Memorandum, Subject: Administrative Removal of Foster Children", dated June 25, 1974 and put into effect on or about August 5, 1974, setting forth procedural changes with regard to the removal of New York City foster chil-

*Intervenor Defendants First Amended Answer
and Cross Claim*

dren from foster homes when they were being moved to other foster homes or institutions.

27. On information and belief said procedure will be applicable to plaintiff foster parent Madeline Smith and plaintiff foster children Danielle and Eric Gandy.

28. Plaintiff foster parent Madeline Smith and plaintiff foster children Danielle and Eric Gandy have an adequate remedy under State law.

AS A TWELFTH AFFIRMATIVE DEFENSE

29. Repeat each and every allegation contained in paragraph 26 herein.

30. On information and belief said procedure will be applicable to plaintiff foster parents Ralph and Christiane Goldberg and plaintiff foster child Rafael Serrano.

31. Plaintiff foster parents Ralph and Christiane Goldberg and plaintiff foster child Rafael Serrano have an adequate remedy under State law.

AS A THIRTEENTH AFFIRMATIVE DEFENSE

32. On information and belief a habeas corpus proceeding for the custody of the children Cynthia and Cathleen Wallace was initiated in the Supreme Court for the State of New York, Nassau County, by the children's mother, Patricia Wallace, and plaintiffs Dorothy and George Lhotan are party defendants in said proceeding.

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33. Plaintiff Dorothy and George Lhotan have adequate remedy under state law.

AS A FOURTEENTH AFFIRMATIVE DEFENSE

34. Intervenor-defendants, individually and as a class, are natural parents who place their children in foster care with public and quasi-public "authorized agencies" by signing an instrument designated Authorization for Placement of Child in Foster Care, or since September 1, 1973, by means of an instrument entitled Authorization to Place Child in Foster Care (copies annexed hereto). Their children are, or will soon be, in foster care for a year or more. On information and belief said instruments are routinely executed by natural parents and by a Social Service representative. Said instruments contain no reference to foster parents and no provision that foster parents might be acquiring individual rights to the children of intervenor-defendants as a result of the signing of the foster care placement instrument.

35. In signing the instruments intervenor-defendants natural parents are led to believe or rely on the implicit representation of the foster care placement instrument and on explicit representations by Social Service representatives that the foster care placement is only with a Social Service official or an authorized agency and not with individual foster parents.

36. On information and belief, intervenor-defendants and the class they represent would not place their children in foster care if they believed that placement would be with an individual foster family and not with public agencies.

*Intervenor Defendants First Amended Answer
and Cross Claim*

AS A FIFTEENTH AFFIRMATIVE DEFENSE
(not before the Court)

• • •

CLASS ALLEGATIONS

40. Intervenor-Defendants seek to defend this action and to cross claim as a class under the Federal Rules of Civil Procedure 23 (a), 23(b)(1)A, 23(b)(1)B, and 23(b)(2).*

41. The class which intervenor-defendants, Rodriguez, Diaz, Robins, Shabazz and Collazo represent is that of all parents who have children in foster care placement under the aegis of one or more defendants and who placed their children by signing the form "Authorization for Placement of Child in Foster Care" or the form "Authorization to Place Child in Foster Care" (forms annexed). This form of foster care placement is commonly referred to as "Voluntary Foster Care Placement." There are currently at least 7,000 parents in this class.

• • •

AS AND FOR A CROSS-CLAIM AGAINST DEFENDANTS
DUMPSON, BEINE AND DALL

PRELIMINARY STATEMENT

46. Intervenor defendants, Rodriguez, Diaz, Robins, Shabazz and Collazo on behalf of themselves and all

* Boilerplate allegations omitted.

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and Cross Claim*

other persons similarly situated assert a cross-claim against Defendants Dumpson, Beine, Dall pursuant to U.S.C. 1343 (3)(4), 42 U.S.C. 1983, 22 U.S.C. 2201, 2202, and Rule 57 and Rule 13 (g) of the Federal Rules of Civil Procedure. Intervenor defendants seek to have this Court declare that a parent who has "voluntarily" placed a child in foster care with the defendants is entitled to prior notice and a hearing when defendants propose to move intervenors' children from one foster home or institution to another foster home or institution. Intervenor defendants' natural parents claim that defendants failure to provide natural parents and members of their class with such notice and hearing violates their constitutionally protected rights as parents without due process of law and denies them the equal protection of the laws.

47. Intervenor natural parents placed their children in foster care on a temporary basis in order to deal with problems or crises in family life such as illness, destitution, or marital conflict. They were required to sign the authorization forms annexed hereto as Exhibit A or B. Defendants social services officials placed their children in foster homes pursuant to license and contract directly or through semi-public voluntary-authorized agencies.

• • •

49. On information and belief, after the children of Intervenor Diaz entered foster care they were placed by the Commissioner of Social Service at the New York Foundling Hospital and from January to June, 1974, the children—five siblings—stayed in the nursery maintained by the Agency.

*Intervenor Defendants First Amended Answer
and Cross Claim*

50. On information and belief, sometime in May, 1974 Mr. Rodriguez, a worker from the Agency told Mrs. Diaz that they were planning to move the children into several foster homes.

51. On information and belief, counsel for Mrs. Diaz telephoned Mr. Rodriguez and Mrs. Blatt, a worker at the Division on Inter-agency Relations of the Department of Social Services Agency and an agent and employee of defendants social service officials and requested that the children not be moved because a placement of the children would be challenged in legal proceedings and there was a possibility that they might be able to come home in several months.

52. On information and belief, counsel for Intervenor Diaz requested that the children not be moved because the children should be spared an unnecessary move and in addition, they would suffer by being separated from one another. On information and belief, Mrs. Blatt, agreed to hold up the proposed move of the children. Nevertheless, in early June 1974 the children were separated and moved to two separate foster homes.

53. On information and belief, Intervenor Diaz received no formal notice of the proposed move, nor was she ever advised that she had a right to ask for a hearing to protest the move.

• • •

60. The authorization to place children in foster care annexed hereto as Exhibit B consequently provides that

*Intervenor Defendants First Amended Answer
and Cross Claim*

the parent has a right to participate in planning for her child.

61. The decision to remove a child from one foster home or institution to another is always important to the child, and to the child's parent who retains the primary interest in her child's development. Therefore, her ability to participate in making the decision concerning the moving of her child in foster care is an essential aspect of planning for the child.

62. On information and belief, the move of a child can also have a negative affect of the parent's ability to maintain contact with the child and this is an independent reason why the moving of a child in foster care might affect its parents' interests.

63. On information and belief, the moving of a child in foster care is an occasion to determine whether the child should be returned home and in this respect also a removal of a child in foster care affects the interest of both parent and child.

• • •

65. The failure to provide notice and an opportunity for a prior hearing to parents before their children are moved from institutions or foster homes to institutions or foster homes, as described above, deprives the intervenor-defendants of parental rights without due process of law and violates State Law.

Wherefore, intervenor defendants pray that this court enter an order,

1. Dismissing the complaint herein.

*Intervenor Defendants First Amended Answer
and Cross Claim*

2. Declaring that intervenor defendants represent a class of natural parents whose children have been placed with defendants pursuant to an Authorization executed by the parents.
3. Declaring that intervenor-defendants are entitled to adequate notice and an opportunity for a due process hearing before their children are moved by defendants from one foster home or institution to another.
4. Such other and further relief as to the court may seem just.

MARTTIE LOUIS THOMPSON
Community Action for Legal Services Inc.
Attorney for Intervenor Defendants
335 Broadway
New York, New York 10013
966-6600
LOUISE GRUNER GANS
TOBY GOLICK, of Counsel

Trial Exhibit "A"

AUTHORIZATION FOR PLACEMENT OF CHILD IN AGENCY

Case No. 3109678

This is to certify that I, Edwin & Naomi Rodriguez, residing at 1030 Nelson Ave., Bronx, am the parents (Relationship) of Edwin Rodriguez (Name) 2/6/73 (Age) and that I authorize the Commissioner of Social Services of The City of New York or his duly authorized representatives to place the said child or children in any duly authorized agency as defined in the Social Services Law of the State of New York.

I specifically agree and consent that if the child or children hereinbefore named or any of them, while receiving care in any authorized agency or society for prevention of cruelty to children, is found to be in need of surgical or medical treatment, that such surgical and medical treatment may be administered under the direction of the authorities of the said authorized agency or society for the prevention of cruelty to children without further action on my part, and that such tests or examination as they deem necessary may be given to the said child or children for the purpose of determining the need of the said child or children for medical or surgical care. I further authorize the authorities of any authorized agency or society for the prevention of cruelty to children to give such child or children any treatment, inoculation or vaccination for immunization against contagious diseases as in their judgment may be necessary for the protection of such child's or children's health.

If I do not visit the child or children hereinbefore named while in an authorized agency, as defined in the

Trial Exhibit "A"

Social Services Law of the State of New York, for a period of twelve successive months or more and do not furnish a reason satisfactory to the Commissioner of Social Services of The City of New York or his duly authorized representatives for my failure to do so, the Commissioner of Social Services of The City of New York, in accordance with the authority vested in him by the Social Services Law of the State of New York, the Administrative Code of The City of New York, and the Domestic Relations Law of the State of New York, has the right to and may, if in his judgment it shall be for the best interest of the child or children hereinbefore named so to do, place out through a duly authorized agency the child or children named above in a free family home, with a view to subsequent adoption.

In witness whereof, I hereunto set my hand this 29 day of March, 1973.

Signed in the presence of

EDWIN RODRIGUEZ
Signature of Parent or Guardian

X*

* Naomi signs with a "X".

Exhibit B, Annexed to Answer

**AUTHORIZATION TO PLACE CHILD IN FOSTER CARE
HUMAN RESOURCES ADMINISTRATION
SPECIAL SERVICES FOR CHILDREN**

Case No. 3485802

I (We) Robins, Mary, residing at (House No. and Street) 1267 Grant Ave. (Apt. No. or C/O) 6E (Borough or P.O.) Bronx NY (Zip) 10456 (are) the (mother) (father) (legal guardian) of the child Robins, Corrie born on 9-3-68 and I (we) authorize the Commissioner of Social Services of the City of New York to place the child in a duly authorized agency as defined in the Social Services Law of the State of New York. I (We) understand that the Commissioner will inform me (us) of the agency with which the child is placed. I (We) also understand it is my (our) responsibility to keep that agency informed of (our) whereabouts and my (our) plans to resume caring for the child and of any delays which make continuation of placement necessary.

Placement is required because I (we) am (are) unable to make adequate provision for the support, maintenance and supervision of the child in his (her) own home or with relatives or friends.

I (We) anticipate placement will be required for no longer than 6 month(s). I (We) understand that when the reason for placement no longer exists, I (we) should ask for the child's return and that the Commissioner will return the child, provided that the Commissioner is satisfied that I (we) am (are) able to care for the child. In placing the child under the Commissioner's care, I (we) con-

Exhibit B, Annexed to Answer

sent to the administration of such immunization, tests and treatments, including dental and surgical treatment, as are considered necessary for the well-being of the child. I (We) understand that I (we) will be consulted, if possible, whenever surgery is necessary. However, in the event that the child requires emergency surgery or treatment, I (we) authorize the Commissioner to consent to such surgery or treatment if, for any reason, I (we) cannot be consulted. I (We) have been further informed and understand that:

1. I (We) and the agency with which the child is placed are expected to work cooperatively planning for the child and that the agency will offer me (us) whatever help is available to enable me (us) to decide what is best for the child. While the child is in placement, it is my (our) right and responsibility to visit the child regularly and to actively participate in planning until the child is to have the benefit of a permanent home, either with me (us) or in an alternative setting.

2. Under the laws of the State of New York if, for a period of six successive months, I (we) do not keep in contact with the child, my (our) failure to do so may be considered abandonment. In addition, if, for a period of one year, I (we) have not made efforts to plan for the child, my (our) failure to do so may be considered permanent neglect under the law. If either of the foregoing should occur, Court action may be taken to terminate my (our) parental rights.

3. Pursuant to the provisions of Section 358a of the Social Services Law, a proceeding may be initiated in the Family Court to obtain Court approval of this instrument

Exhibit B, Annexed to Answer

and the transfer of the case and custody of the child to the Commissioner of Social Services of the City of New York. In connection with such proceedings, I (we) do hereby consent to the jurisdiction of the Family Court over such proceedings.

4. I (We) waive notice of any such proceeding and service of the petition on me (us) as well as a hearing thereon. I (We) consent that the Family Court Judge's determination be made based solely upon the petition and other papers if any, that are submitted to the Court and to the entry of an order approving this instrument and the transfer of care and custody of the child to the Commissioner of Social Services of the City of New York, based upon said determination.

Dated this 8th day of January, 1974

MARY ROBINS
Signature of Parent or Guardian

Signed in the presence of

GERALDINE UNDERWOOD
Department of Social Services

Affidavit of Naomi Rodriguez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
74 Civ. 2010 RLC

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY
AND REFORM, *et al.*,

Plaintiffs,

—against—

JAMES DUMPSON, *et al.*,

Defendants,

NAOMI RODRIGUEZ, *et al.*,

Intervenor-Defendants.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

NAOMI RODRIGUEZ, being duly sworn, deposes and says:

1. That I am the mother of Edwin Rodriguez, a baby born on the 6th day of February 1973. Edwin Rodriguez was placed by me in foster care with the Commissioner of Social Services of the City of New York and through him, with the Harlem Dowling Children Service Inc., an authorized agency.

Affidavit of Naomi Rodriguez

2. For some time prior to the birth of my child, my husband had not been treating me well and had lost his temper and struck me on many occasions. Since I am blind I was very concerned as to how I was going to care for and protect my infant child under these circumstances. The hospital social worker suggested that I consider putting the baby in foster care until my problems with my husband were worked out and I accepted the social worker's suggestion that foster care might be a temporary solution.

3. After my baby was born, he required eye surgery and remained in the hospital and about the time he was ready to be discharged, Ms. Ingram, a social worker from the Bureau of Child Welfare, came to my house for me to sign a form to place my child in foster care. I told Ms. Ingram that I only wanted to place my baby temporarily for a period of up to six months so as to give me a chance to straighten out my marital difficulties. Ms. Ingram expressly told me that she agreed to the conditions under which I wanted to place my child and assured me that I could have my baby back when I wanted him.

4. Ms. Ingram read the form, Authorization for Placement of Children in Foster Care, out loud to me before I signed it but I didn't understand the language of the form very well since it is full of legal and other words that I didn't understand, but I signed the form anyway because the important thing to me was Ms. Ingram's assurance that I was placing the baby in foster care only temporarily to resolve my marital difficulties and that I would have no trouble getting him back. I thought that I could depend on what Ms. Ingram said to me and didn't think it was important for her to write it down.

Affidavit of Naomi Rodriguez

5. Ms. Ingram told me that I would be able to visit my baby but she didn't tell me how often these visits would be.

6. Some time after I signed the form my baby, Edwin, was put in charge of the Harlem Dowling Children Service, Inc., an agency, and through them in a foster home. My social worker at the agency is a Mrs. Green.

7. For the first few months after I signed the placement from Harlem Dowling Children Service Inc. didn't let me visit my child. After that, they generally let me see the baby once or twice a month. Though I asked Mrs. Green to let me take my baby home for weekends, she refused my request.

8. In May 1973 I separated from my husband and went to live with my mother. Since I was no longer living with my husband, I felt it was safe to take the baby home and asked Mrs. Green to return my child to me. Mrs. Green never gave me a definite answer to my request and I regularly kept calling her and going to see her to ask when she would return my child only to have my questions ignored.

9. In January 1974, finally, Mrs. Green told me that the agency was refusing to return the child because of my blindness and because I needed mobility training to cope with my blindness, and needed a larger apartment.

10. I didn't place my baby in foster care because of my blindness. I am the mother of an older child, Elizabeth Pauline, who was born on February 25, 1971 and I had always been able to take care of her. I am close to my

Affidavit of Naomi Rodriguez

family and they have always helped me so that my blindness was not a handicap. Throughout this time and from the very beginning I felt that I was completely at the mercy of the agency and had no rights. At no point did the agency tell me that since I wanted my baby back I had a right to go to court and ask the court to return my child to me. It wasn't until April 1974 that my mother suggested that perhaps I should see a lawyer, and I consulted an attorney at Bronx Legal Services. At no time before or after I agreed to place my child in foster care and signed the foster care form did anyone ever tell me that foster parents with whom my baby was placed might claim that they had a right to keep my child. The agency tells me very little about my child and I don't even know whether he has been in one foster home or several. If I had known what putting my child in foster care really meant: that I would have very little chance to see my baby and that my baby would not be returned to me when I asked for him and how much I would be at the mercy of the agency, I would never, never, never have agreed to put my baby in foster care or signed the form they gave me to sign.

11. I am now told by my lawyer that foster parents are claiming that they have equal or greater rights than I to children like mine. If I had ever been told, or known, that individual foster parents could be given such rights, I never, never, never would have placed my child in foster care.

12. I was assured that my baby would be returned to me as soon as I resolved my marital difficulties, which I

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Affidavit of Naomi Rodriguez

had done barely two months after I signed the form, but the promise turned out to be a lie.

NAOMI RODRIGUEZ

Sworn to before me this
17th day of October, 1974.

Witnessed by (Illegible)

LOUISE GRUNER GANS
Notary Public, State of New York
No. 31-406525
Qualified in New York County
Commission Expires March 30, 1975

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Affidavit of Sara Ruff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
74 Civ. 2010 RLC

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY
AND REFORM, *et al.*,

Plaintiffs,

—against—

JAMES DUMPSON, *et al.*,

Defendants,

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

SARA RUFF, being duly sworn, deposes and says:

1. I am the mother of Rosalyn and Rosemarie, two little girls born on May 25, 1970. In June 1970 I signed an Authorization for Placement of Children in Foster Care, a copy of which is annexed hereto.

2. I signed the form right after I had given birth to my children while still in the hospital. The form was brought to me by a representative of the Commissioner of Social Services of the City of New York. I signed the foster

Affidavit of Sara Ruff

care placement form because I was a minor with no apartment or money of my own. I was told by a Department of Social Services worker that the placement was only temporary, since I did not want to place my children for adoption. I didn't understand what the form that I signed meant but felt that I had no choice but to sign it anyway.

3. Shortly after I signed the foster care placement form my children were taken to the New York Foundling Hospital and I was told that from that time on they were the agency caring for my children. For a year after my children were taken to the New York Foundling Hospital they remained in Manhattan and I was able to visit them every week at the New York Foundling Hospital. Then, in the Spring of 1971 the New York Foundling Hospital told me they were planning to move my children. Since I lived on Staten Island, I asked them to find a foster home in Staten Island or in Manhattan so that I could continue seeing the children often. Instead, I was told that the children were being moved to a foster home in Westchester County and my objection that it was very far away for me, made no difference.

4. Some time in June 1971 the children were placed in a foster home in Westchester County. From then on I could see my children only at the Westchester office of the New York Foundling Hospital in Yonkers and I was not permitted to see them more often than once a month.

5. The trip to Yonkers from Staten Island took about three hours each way and cost over \$3.00 each way, making the visits extremely difficult and expensive for me. When the children were moved from Manhattan to Westchester I was not given a notice and a right to object to

Affidavit of Sara Ruff

the move of my children at a hearing, yet the drastic reduction in the frequency with which I could see my children, the enormous difference in traveling time and cost imposed a severe burden and loss on me.

6. While the children were in Manhattan and I saw them weekly we developed a warm relationship. Therefore, from the point of view of the children as well, I didn't think it was right to move them to a place where they would be able to see me, their mother, so much less often.

7. My children were placed in the home of a childless couple, who now do not want to return them to me. Since the foster parents have had my children for more than two years, they can and are now opposing me in my claim for the return of my children in a habeas corpus proceeding and in a foster care review proceeding pursuant to section 392 of the Social Services Law in the Family Court. I had never been told, when I signed the form or later, that foster parents could refuse to return my children to me.

/s/ SARA RUFF

Sworn to before me this
21st day of October 1974.

LOUISE GRUNER GANS
Louise Gruner Gans
Notary Public, State of New York
No. 31-406525
Qualified in New York County
Commission Expires March 30, 1975

Exhibit "A"**PLACEMENT AGREEMENT**

Form M-912u
Rev. 12/15/67

THE CITY OF NEW YORK—DEPARTMENT OF SOCIAL SERVICES
BUREAU OF CHILD WELFARE
2 Lafayette Street
New York, N.Y. 10007

A. We, as foster parents of children boarded in our home by the Department of Social Services, Bureau of Child Welfare, understand that

1. Board is paid for each child at the established monthly rate.
Clothing for each child is provided by cash allowance to the foster mother; provisions are made for health and medical care; and reimbursement is made for certain incidental expenses as explained in the Foster Parents' Manual.
2. The Department of Social Services provides the services of a Caseworker who makes regular visits to the foster home, and helps the family with plans for the child's progress and development, and with special problems as they arise.
3. Visiting between the child and the relatives, whether in the home or elsewhere, is arranged by the Department of Social Services.
4. The Department of Social Services has the responsibility for planning for the child, including decisions

Exhibit A

for his removal from the foster home, either to his own family or placement elsewhere.

B. As foster parents we agree to the following:

1. We will assume responsibility for the day-to-day care of the child and will share with the child the activities in our home, church and community. Through the Caseworker, we will keep the Department of Social Services aware of the child's progress in our home.
2. We will notify the Department of Social Services of any expected change in our household, such as change in sleeping arrangements for the foster child, change in family composition, a move to a new address, and agree not to board or lodge children or adults from any other source or obtain employment outside the home without first obtaining the approval of the Department of Social Services.
3. We agree to cooperate with the Department of Social Services in arrangements for visits between the child and his relatives.
4. We agree to obtain the permission of the Department of Social Services before taking the child away from our home on an overnight visit or for a longer period.
5. We will let the Department of Social Services know at once if medical care is indicated for the child. The foster mother will take the child to the appropriate hospital, clinic, or physician, as arranged with the Caseworker.

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Exhibit A

6. We agree to cooperate and comply with all plans of the Department of Social Services for the transfer or discharge of a child from our home.

CHRISTIANE GOLDBERG
Signature of Foster Mother

RALPH GOLDBERG
Signature of Foster Father

Bureau of Child Welfare

Caseworker ILLEGIBLE Date May 22, 1963

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Exhibit B

CATHOLIC GUARDIAN SOCIETY
122 East 22nd Street
New York, N. Y. 10010

Telephone: ORegon 7-5000

AGREEMENT BETWEEN CATHOLIC GUARDIAN SOCIETY
AND FOSTER PARENTS

- I. When a child is accepted for board by Foster Parents, it is with the understanding that the child shall be returned to the Agency upon request, realizing that such request will only be made for good reason. If for some reason the Foster Parents wish to have a child transferred from their home, sufficient time shall be given for the Agency to make suitable plans for the child.
- II. Catholic Guardian Society agrees to provide a monthly stipend for each child, according to age.
- III. Catholic Guardian Society also agrees to provide the following:
 1. Casework service for each child.
 2. Use of psychiatric, psychological, vocational services as they are needed.
 3. Clothing allowance every three months.
 4. Reimbursement for medical, dental and eye examinations and for prescriptions given.

Exhibit B

Extensive work should be discussed with Worker prior to the work being undertaken.

5. Reimbursement for school textbooks and tuition and carfare to and from the Agency if prior approval has been given by the caseworker.

IV. Catholic Guardian Society acknowledges that under the law Foster Parents, who care for a child, or children for twenty-four consecutive months, shall have preference for adoption if they so desire.

V. Foster Parents agree to provide each child with the following:

1. Competent adult supervision at all times.
2. Religious training in the specific faith of each child and responsibility for weekly attendance at church services.
3. Adequate diet, clothing, bathing, toilet and lavatory facilities.
4. School supplies, such as pencils, pens, notebooks and paper and school carfare.
5. Medical supplies usually found in family medicine cabinets.
6. Haircuts.

Exhibit B

7. Allowance for each child. (Please refer to "Guide for Foster Parents").

8. Shoe Repair.

Catholic Guardian Society
Archdiocese of New York

JAMES P. O'NEILL
James P. O'Neill
Executive Director

We agree to accept children for board subject to the foregoing rules and regulations of the Catholic Guardian Society.

Husband's Signature

Date: 2/20/71

MADELINE SMITH
Wife's Signature

JPO'N:is

Answer of New York City Defendants

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2010 (RLC)

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY
AND REFORM, *et al.*,

Plaintiffs,

—against—

JAMES DUMPSON, *et al.*,

Defendants.

Defendants, Dumpson, Beine and Dall, by their attorney, W. Bernard Richland, Corporation Counsel, answering the "Second Amended Complaint",

1. Deny the allegations set forth in paragraph "1" thereof except admit that this action was brought to establish the validity of said allegations.

2. Deny the allegations set forth in paragraphs "2" and "3" thereof.

3. Deny the allegations set forth in paragraph "4" thereof except admit that plaintiffs will attempt to establish the validity of the first sentence thereof.

Answer of New York City Defendants

4. Deny the allegations set forth in paragraphs "5", "6", "7", "8", "9", "10", "11", and "12" thereof.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" thereof.

6. Deny the allegations set forth in the first sentence of paragraph "15" thereof and deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the last sentence of said paragraph.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the last phrase of paragraph "16" thereof.

8. Deny the allegations set forth in the first sentence of paragraph "17" thereof.

9. Deny the allegations set forth in the second sentence of paragraph "18" thereof and respectfully refer the Court to New York Social Service Law §395 *et seq.* for their full content and legal effect.

10. Deny the allegations set forth in the last phrase of paragraph "21" thereof.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "23" and "24" thereof.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "26" and "27" thereof except deny the allegations set forth in the first sentence of said paragraph "26".

Answer of New York City Defendants

13. Deny the allegations set forth in paragraphs "28" and "29" thereof.

14. Deny the allegations set forth in the first sentence of paragraph "31" thereof.

15. Deny the allegations set forth in paragraphs "32", "33", "34", "35", "36" and "37" thereof.

16. Deny the allegations set forth in the first sentence, the first half of the second sentence and the third sentence of paragraph "38" thereof.

17. Deny the allegations set forth in paragraphs "39", "40" and "41" thereof.

18. Deny the allegations set forth in the last phrase of paragraph "43" thereof.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "44", "45", "46", "47" and "48" thereof.

20. Deny the allegations set forth in paragraph "50" thereof.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "51" and "52" thereof.

22. Deny the allegations set forth in paragraphs "53", "54", "55", "56", "57", "58", "59", "60", "61", "63", "64", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76" and "77" thereof.

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FURTHER ANSWERING THE COMPLAINT AND AS A FIRST SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS ALLEGE:

23. The complaint fails to allege a deprivation of rights within the meaning of the Fourteenth Amendment to the Constitution and thus this Court lacks subject matter jurisdiction over this action.

AS A SECOND SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS ALLEGE: .

24. The complaint fails to state a cause of action.

AS A THIRD SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS ALLEGE:

25. The statutes and regulations herein under attack are sufficiently protective of and do not deny such rights as are possessed by the plaintiffs herein.

AS A FOURTH SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS ALLEGE:

26. Procedures recently adopted by the City defendants herein are sufficiently protective of and do not deny such rights as are possessed by the plaintiffs herein.

WHEREFORE defendants pray that this Court enter judgment in their favor dismissing the complaint and declar-

Answer of New York City Defendants

ing the statutes and regulations herein under attack as constitutional and not violative of plaintiffs' rights.

Yours, etc.

W. BERNARD RICHLAND
Corporation Counsel
Attorney for New York City
Defendants
Office & P. O. Address:
Municipal Building
New York, New York 10007
566-4619/2192
By: ELLIOT P. HOFFMAN
Assistant Corporation
Counsel

Dated: February 28, 1975

Affidavit of Carol J. Parry

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
74 Civ. 2010 (RLC)

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY
AND REFORM, *et al.*,
Plaintiffs,

—against—

JAMES DUMPSON, *et al.*,
Defendants.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

CAROL J. PARRY, being duly sworn, deposes and says:

1. I am the Assistant Commissioner for Special Services for Children in the New York City Department of Social Services, and I submit this affidavit in support of the proposed judgment submitted by the New York City municipal defendants. I am a successor to defendant Beine in this action.

2. I have a Master's Degree in Social Work from the University of Connecticut School of Social Work and I

Affidavit of Carol J. Parry

am a Board member of the National Association of Social Workers. I have been an instructor in field work at both the Columbia University School of Social Work and the Hunter College School of Social Work. I have also been a Faculty Associate at the New School for Social Research. This affidavit is submitted by me both in my capacity as a public official and as a professional social worker.

3. On May 20, 1974, when I assumed my present position, this agency was in the process of revising its pre-removal procedures. That revision resulted in the procedure described in the Court's recent opinions. While this litigation concededly was the impetus for the revision, the underlying determinations to change the procedure was made from a different perspective than the thrust of this litigation.

4. Foster care, as viewed by the public policy of this state and by this agency, is a temporary but necessary alternative to a child residing with either its natural parents or adoptive parents. Admittedly, the word, "temporary" is often as much a hope as it is a fact, but our goal remains to transfer as many children as soon as possible out of foster care.

5. Foster care is provided by either a direct relationship between the City and the foster parent or by contract with approximately ninety voluntary agencies. Those agencies, with whom more than 85% of the foster children are placed, then contract directly with the foster parents and supervise the foster homes.

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6. We, of course, agree with and subscribe to the conclusion of this Court regarding the absence of any legal entitlement of foster parents to maintain a foster care relationship. However, because we entrust foster children to their care and day to day supervision, their objection to the termination of a particular relationship is important to us. A hearing, similar to that originally suggested by plaintiffs, was thus viewed by this agency as an appropriate, although by no means perfect, method by which foster parents could call our attention to what they perceive as an improper decision.

7. In initiating our new procedures we assumed that there would be relatively few instances in which the foster parent would dispute a decision to remove a foster-child from their home. In those instances where there would be disagreement the hearing would serve both as a method of resolving such disputes and of monitoring the operations of the agency with a minimum reallocation of extremely limited resources.

8. Our assumption regarding the relative infrequency of disputed removals has been proven correct as evidenced by the fact that there were only 16 hearings during all of 1975. (I am informed by counsel that plaintiffs have implied, if not directly alleged, that some of the voluntary agencies with whom we contract are not following the presently mandated procedure, thus minimizing the number of hearings requested. While this may be true to some extent, they have not called to our attention a single specific instance of such failure. We therefore feel justified in assuming that even if there were full compliance with presently mandated procedures, the number of requested hearings would not be significantly greater).

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9. In contrast to the extremely limited number of requested hearings, which were the only type of hearings discussed in this litigation prior to the decision, the decision mandates between 1,600 and 4,200 hearings a year, depending on its ultimate applicability.

10. In the short time available to us since the decision, we have assembled data in an effort to estimate the implications of this decision. Based on a study of the months of December 1975 and January 1976 we expect that during the next year these will be at least 4,200 removals or changes of status of children who have been in foster care in a particular home for more than one year. Approximately half of these children will be discharged from foster care. Of those discharged at least thirty-five percent will be returned to their natural parents with another five percent returning to relatives other than natural parents. Twenty-five percent will be adopted by their foster parents, and another five percent will be adopted by others. The remaining children will be discharged because they reach the age of majority.

11. Of those children moved within foster care at least a third will be moved as a result of the request of a foster parent, with four to five percent more being moved because of other reasons relating to the unavailability of the foster home, i.e. the death of the foster parent or movement out of state. These particular estimates were verified by a random but statistically significant check of the transfers in two of our direct care offices and by data provided by the Child Welfare Information Service Inc. based on a sampling of voluntary child care agencies. The myriad of other reasons for transfer have

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not been tabulated, but they include transfer to another foster home for a possible adoption, reuniting siblings and inadequacy of the foster home.

12. The order which we have submitted herewith reflects both our understanding of the Court's decision and our concern over the institution of a large new bureaucratic apparatus prior to our having the opportunity to fully litigate its appropriateness before this Court and receiving a final determination from the Supreme Court.

13. Although the various figures above cited include instances of adoption, we assume that they are not to be included in this hearing process as adoptions take place only after judicial review (Family Court Act §641). Additionally, we view adoptions by the foster parents as outside the ambit of this Court's decision as they do not represent removal from a home but merely a change in status.

14. In addition to adoptions, there are numerous other instances of removal pursuant to various Court orders, the most common being writs of habeas corpus. We have specifically excluded those situations as the Court proceedings themselves provide for hearings.

15. The general concern shared by all the parties to this litigation regarding the need for a speedy determination is heightened in emergency situations. Our current procedures exclude emergency situations from their applicability. (In defining emergency we have been guided generally by the definitions of neglected and abused children set forth in Social Services Law Section 371). Regardless of the speed at which a hearing procedure moves, even

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a day's delay in the instances enumerated in that statute can have repercussions of a far more serious nature than a possible wrongful removal. We do not understand the plaintiff to contend otherwise. Our proposed order has therefore excluded those instances from the hearing procedure.

16. At present there is no unit in our agency designed to exclusively represent children. However every decision relative to children is made by one or more experienced case workers in accordance with the best interest of the child under state law. While the ultimate affirmance of the Court's full decision might administratively warrant the establishing of such a unit, we see nothing in the opinion mandating its establishment. The clear implication of the Court's opinion is that the individual representative be independent of the original decision to remove the child and we have so provided.

17. In addition to the decretal paragraphs reflecting the Court's opinion we have requested both a stay of enforcement and reargument of portions of the decision.

18. As Judge Pollack anticipated in his dissenting opinion, the provision of hearings when not requested by the foster parent has come as a surprise to this agency. Both the underlying assumptions leading to this provision and the resulting problems are of an entirely different magnitude than results predictable from any of the claims made in this litigation.

19. This agency has operated, as any agency must, under the assumption that its decisions are neither arbitrary nor capricious. There are literally thousands of significant decisions made each day by this agency and

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the contracting agencies. Admittedly the decision to transfer a child out of a foster home is one of the most significant made. These decisions are not lightly made however, as evidenced by the fact that other than discharges there was only one move in the last year for each ten members of the plaintiff class. The basic correctness of these approximately sixteen hundred transfers is further evidenced by the fact that only one foster parent in a thousand sought to review the decision. We are thus confronted with a mandate, if a stay is not granted pending reargument, that we conduct several thousand hearings a year without the opportunity to rebut the underlying premise on which the Court based its mandate.

20. What is perhaps more significant is the absence of any showing that an uncontested hearing, when such hearings are held by the thousands, will provide any better results than a decision-making process based on the continuing relationship between caseworker and family.

21. The presumption that a decision is correctly made is further strengthened when the child is being returned to its natural parents. The Court in its decision has acknowledged the primacy of the natural family relationship over the foster family. Yet it has mandated hearings not only in the seven or eight instances a year when there is a serious dispute as to the propriety of the return to this natural state, but also in those six or seven hundred instances where no one disputes the return.

22. We therefore request that the Court give us an opportunity to fully litigate the need for unrequested hearings. If this opportunity is granted we will demonstrate (a) the deliberate manner in which decisions are made

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(b) the inapplicability of the hearing process to significant numbers of transfers, particularly those instances in which the removal is requested (if not demanded) by a foster parent or teenage child (c) the inordinate costs and delays resulting from the granting of these hearings.

23. We also urge upon this Court that it grant a stay of this decision to the extent provided in our proposed order. There are neither resources nor personnel presently available to institute the procedures under which we would conduct the thousands of hearings mandated by the Court's opinion. Nor would it be just to require us to set up an entire apparatus when the legal necessity of such a procedure has not been finally determined.

24. I have been informed by counsel that when the issue of a possible stay was raised during a colloquy with the Court, the Court advised that a stay granted to defendants would necessitate maintaining the status quo for plaintiffs as well. We submit however that maintaining the status quo in the vast majority of instances, by prohibiting uncontested removals, would be inimical to the best interest of the children.

s/ CAROL J. PARRY

Sworn to before me this
7th day of April, 1976

s/ SHARON L. FEIGENBAUM
Commissioner of Deeds
City of New York No. 3762
Certificate filed in New York County
Commission Expires March 1, 1977

Child Caring Agency Request For Approval Of:
(Form W-853, 8 pages)

[PHOTOSTATS]

(Opposite) 

CHILD CARING AGENCY REQUEST FOR APPROVAL OF:																			
<input type="checkbox"/> REPORT ON 60-DAY PLAN		<input type="checkbox"/> INITIAL SEMI-ANNUAL REVIEW																	
<input type="checkbox"/> ANNUAL REAUTHORIZATION	<input type="checkbox"/> SUBSEQUENT SEMI-ANNUAL REVIEW(S)	<input type="checkbox"/> INITIAL 18-MONTH COURT REVIEW	<input type="checkbox"/> SUBSEQUENT BIENNIAL COURT REVIEW(S)	<input type="checkbox"/> EXTENDED CARE															
ON BEHALF OF																			
Surname of Child	First	M.I.	Date of Birth	Type of Placement <input type="checkbox"/> Volun. <input type="checkbox"/> 358a App'd <input type="checkbox"/> Ct-Pl'd <input type="checkbox"/> 382 App'd	Initial Placement Date	Date Placed in your agency	382 SSL Docket No. if any	City Bill Number											
TO: THE CITY OF NEW YORK, DEPARTMENT OF SOCIAL SERVICES, SPECIAL SERVICES FOR CHILDREN <input type="checkbox"/> 80 Lafayette Street, New York, N.Y. 10013 <input type="checkbox"/> 192 East 151st Street, Bronx, N.Y. 10451 <input type="checkbox"/> 1274 Bedford Avenue, Brooklyn, N.Y. 11216 <input type="checkbox"/> 185-15 Archer Avenue, Jamaica, N.Y. 11433 <input type="checkbox"/> 2 Lafayette Street, New York, N.Y. 10007							Child's Social Security Number		Child State Case No.										
							DATE PREPARED _____ 19 ____												
							DATE DUE _____		Month: Day: Year										
FROM: _____			Name of Agency		State Agency Code No.		Supervisor												
			Division		Worker		Telephone No.												
Name of Agency with major casework responsibility _____																			
SSC Data	Case Surname	Case Number	Team/Cld.	Division/Borough Office		Worker	Telephone No.												
Cross-Reference (Other Names Known by)			Type of Placement Facility <input type="checkbox"/> F.H. <input type="checkbox"/> Inst. <input type="checkbox"/> G.R. <input type="checkbox"/> G.H. <input type="checkbox"/> A.O.B.H.		P.A. Case Number/Category		Income Maintenance Center												
Name and Address of Foster Parents or Facility _____																			
Child's Siblings		Date of Birth	WHEREABOUTS If at home, list address If in placement, name of agency			Type o-Placement If any	Initial Placement Date If any												
Surname	First	M.I.																	
1.																			
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Child's Father's Full Name					Mother's Full Name (incl. Maiden Name)														
Address					Address														
Social Security Number					Social Security Number														
I. Original Reason for Placement _____																			
FOR SSC USE ONLY:																			
<input type="checkbox"/> 60-Day Plan <input type="checkbox"/> Initial Semi-Annual Review <input type="checkbox"/> Subsequent Semi-Annual Review(s)					<input type="checkbox"/> Annual Reauthorization <input type="checkbox"/> Extended Care <input type="checkbox"/> Suspended Payment (where appropriate)														
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FORM W-853 P.I. Rev. 7/15/75 100M-DPM 908133 (78)																			

Please answer all questions, where applicable. (Use additional sheets of paper, if necessary)

II. Child in Care

A. Physical Health

Date of last physical checkup	Height	Weight	Inoculations given since last report	Date of last dental checkup	Date of last ocular checkup

Statement of health. Note diagnosis, treatment and follow-up, where indicated. (Include significant changes, illnesses, or accidents.)

B. Psychological and Psychiatric Examinations

Date of last psychological	Type of test given	I.Q. Score	Date of last psychiatric	Diagnosis*	Prognosis

*Is treatment contemplated? ☐ Yes ☐ No If "Yes", indicate why and type of treatment recommended.

C. Family Planning Services (to meet New York State Regulations)

1. For a child in foster home boarding care, 12 years of age or older, has foster parent been notified by required letter of the availability of family planning services? If not, why not? If services were requested, how were they provided?

2. For a child in group care, 12 years of age or older, were family planning services considered and offered? How were they provided? If not provided, why not?

D. Social Adjustment

1. Composition and description of child's living arrangements, including type of child care facility.

II. D. Social Adjustment (continued)

2. Description of child's psycho-social and psycho-sexual adjustment, including understanding of placement.

3. Relationship to peers, agency, community and, if appropriate, to foster family (include latter's own children, if any).

E. Educational and Vocational

1. Type of school, grade level, reading and mathematics levels, and adjustment.

2. Problem areas and remedial help provided.

3. If child is 14 years or over, vocational and academic goals.

F. Religious Education

Describe religious education provided. If child has been placed out of religion, describe specific arrangements made for religious training.

III. Resources and Living Arrangements of Natural Family

A. Describe family's living arrangements and composition of the household.

B. Financial

1. What is family's current source of income? Include date(s) and means of verification. If family is receiving public assistance, include name and address of Income Maintenance Center and case number.
2. If employed, give name and address of each person's employer, total income and major expenses. Expenses should include rent and unusual expenses, such as payments for support, etc.
3. Describe any changes in family's financial situation since last report. Include family's new address, if they have moved.
4. What medical insurance does family have? Give name of insurance carrier and identification number.

C. Benefits and Resources

1. Indicate whether child receives any benefits from Social Security, SSI, trust funds, law suits, etc., or may be eligible for or entitled to receive such.
2. If natural parent(s) is (are) deceased, give circumstances and date(s) of death.

IV. Planning and Goals

- A. 1. What is your long-range plan for the child?
- ☐ Discharge (Please fill out Section IV. B.)
 - ☐ Adoption (Please fill out Section IV. C.)
 - ☐ Continued Care (Please fill out Section IV. D.)

IV. Planning and Goals (continued)

A. 2. Has your plan changed since last report? If yes, explain.

3. Has the last 24-Month Family Court Review disposition required a change in plan? If so, explain. How has it been implemented?

COMPLETE EITHER SECTIONS B, C, OR D, ACCORDING TO GOAL CHECKED UNDER "IV. A." THEN COMPLETE SECTION V.

B. Goal: Discharge

1. Will the child be discharged to natural parents, extended family, significant others, or self? What is projected date to attain discharge goal? If discharge is to self, what will be the child's living arrangements and means of support?
2. Discuss preparation for discharge, including that for child, natural family, significant others, and foster family, if appropriate.
3. If child is being discharged to family or significant others, indicate total adjustment of family with an assessment of strengths and weaknesses, including any problem with siblings in family.

4. What are the present barriers, if any, to the discharge?

IV. Planning and Goals (continued)

B. Goal: Discharge (continued)

5. What specific services will be offered to overcome these barriers?

C. Goal: Adoption

1. When was the plan for adoption approved?

2. If appropriate, what is the parent's attitude toward surrender?

3. Is child free for adoption? If so, give the date and method by which child was freed.

4. Has adoption or subsidized adoption been discussed with the foster parents? If not, why not? Describe attitude of foster family.

5. If more than three months have elapsed since the plan for adoption was approved, and child is not yet free, what steps have you taken to free the child? Explain.

6. If child has been freed for three months, what steps have you taken to recruit an adoptive home? On what Adoption Exchanges has the child been registered?

7. What is projected date to attain adoption goal?

8. If you plan to continue contact with family and/or significant others after adoption, please explain.

IV. D. Goal: Continued Care

1. Problems centering in child which necessitate continued care as a long-range service plan.

(a) Child has severe problem

1. Describe child's problem and explain specifically why it necessitates continued care as the long-range service plan.

2. Describe services given child specific to child's problem.

3. Describe services offered to the natural family and/or significant others regarding child's problem.

4. What is anticipated length of time child will need continued care?

2. Problems centering in natural family which necessitate continued care as long-range service plan.

(a) Unable to plan

1. Specify parents' problems which prevent them from adequately caring for child, including serious financial mismanagement.

2. Indicate services offered to overcome these problems. Explain, including specific goals. Give family response to services.

(b) Whereabouts of natural family unknown

1. What efforts have been made during the past year to locate parents?

IV. D. Goal: Continued Care (continued)

2. (b) Whereabouts of natural family unknown (continued)

2. Have you requested us to register such parents with our Law Enforcement and Registration Unit as missing persons? If yes, give date and results.

3. Extended family and significant others - If natural family is unable to plan, is unknown, or deceased, describe efforts to involve extended family and/or significant others.

V. Visiting Arrangements

A. Visiting between child and natural family.

1. What is the current visiting plan? Give dates and locations of family and/or significant others' visits that have already taken place. Include participants.

2. Dates and locations of visits with siblings in care. Include participants.

3. What is the projected plan for continued family and sibling visits?

**Excerpts from Testimony (at Trial and by
Deposition in Lieu of Trial)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORGANIZATION OF FOSTER FAMILIES FOR QUALITY
AND REFORM, *et al.*,

Plaintiffs,

—against—

JAMES DUMPSON, *et al.*,

Defendants,

NAOMI RODRIGUEZ, *et al.*,

Intervenor Defendants.

DEPOSITION OF DR. SHIRLEY JENKINS, taken before
Morene B. Korenman, Notary Public of the State of New
York, held at 622 West 113th Street, New York, New
York, on the 11th day of April, 1975, at 1:45 p.m., pur-
suant to notice.

Excerpts from Deposition of Shirley Jenkins

APPEARANCES:

[2]* MARCIA ROBINSON LOWRY, Esq.
Attorney for Plaintiff, Foster Parents
New York Civil Liberties Union
84 Fifth Avenue
New York, New York

LOUIS J. LEFKOWITZ, Esq.
Attorney General of the State of New York
2 World Trade Center
New York, New York
By: STANLEY L. KANTOR,
Assistant Attorney General
of Counsel

LOUISE GRUNER GANS, Esq.
Attorney for Intervenor Defendants
Community Action for Legal Service
335 Broadway
New York, New York

SHIRLEY JENKINS, having been first duly sworn by
Morene B. Korenman, Notary Public of the State of New
York, was examined and testified as follows:

Examination by Mrs. Gans:

• • •

[3] Q. Professor Jenkins, what position do you occupy
at present? A. Professor of Social Research, Columbia
School of Social Work.

• • •

* Figures in brackets refer to each new page of the Stenographic
Transcript.

Excerpts from Deposition of Shirley Jenkins

By Mrs. Gans:

Q. Has your work concerned itself with foster care?

A. Yes, I have been working in relation to foster care, I would say, for over fifteen years in the research capacity.

Q. Have you published books in the field of foster care?

A. Yes, I have published, I guess, four books and a number of articles in professional journals and I have been director of three studies.

Q. Could you name the books and the studies? A. Yes. At the Community Council of Greater New York, I was director of a study on entry into foster care which resulted in a book called *Paths to Child Placement: Family Situations Prior to Foster Care*. That is Community Council of Greater New York, [4] published in 1966.

I was research consultant on the study for the Westchester Children's Association, resulting in a publication in 1964 entitled *Total Treatment for Emotionally Disturbed Children in Foster Care*.

I have been director for ten years of the Longitudinal Study, Family Welfare Research Program at the Columbia University School of Social Work. The first book from that study is *Filial Deprivation and Foster Care*, with Elaine Norman, published by Columbia University Press in 1972.

The second book from that study is forthcoming, also from Columbia University Press, called *Beyond Placement: Mothers View Foster Care*. It is in galley form now, will be published in October 1975.

I also have another book that is called *Priorities in Social Service: Child Welfare in New York City*, pub-

Excerpts from Deposition of Shirley Jenkins

lished by Praeger, done by the New School for Social Research and published in 1971.

• • •

[5] Q. Is the research program that you referred to the same research program out of which Professor Fanshel's studies emerged? A. It is. We studied the same basic population, that is, children who entered care in 1966 in New York City. He concentrated on what was happening to the children and I concentrated on what was happening to the families.

We followed those families up, we interviewed the families at three points in time.

• • •

[16] Q. Professor Jenkins, on the basis of your study, what were the reasons—the major reasons for placement which you found? A. Let me first go back. In the previous study at the Community Council of Greater New York, we worked out a series of major placement reasons and that scheme was followed also in this study, *Filial Deprivation*.

By reason children enter care, we are looking in a way, for the straw that breaks the back. In other words, not a generalized reason, but the specific fact that made the difference from the child being at home or into care.

In this study of the families that we interviewed, 22 percent had children entering care because of the mental illness of the mother, 16 percent child behavior where the child was emotionally disturbed and needed special treatment, 14 percent were neglect and abuse cases, 11 percent the physical illness of the mother, 11 percent the unwillingness or inability of persons other than the

Excerpts from Deposition of Shirley Jenkins

family to continue caring [17] for a child, 9 percent severe family dysfunction, 8 percent were unwillingness of inability of the mother to assume care of the child, 8 percent were abandonment or desertion.

• • •

Q. And the category "unwillingness or inability to assume care"? A. That was primarily unwed mothers who had babies and wanted some time to establish themselves and so they put the babies into foster care.

A great many of those then took the babies home. Sometimes they returned to school, sometimes they got married and then they brought the babies back.

• • •

[18] Another category which was mentioned, unwillingness or inability to continue care, is one way in which children come into care, and that is, a child is left in the care of a relative or a neighbor or a friend and the mother leaves it, maybe, for a very short time, or maybe indeterminate, or maybe her plans were changed.

The person with whom the child was left will call the police and the Welfare Department and say, "I have this child. I can't take care of them any more. I am not responsible for it. Take the child."

• • •

There are situations where there will be a mental breakdown on the part of the mother, very often related to severe stress, and a social worker may arrange for a child to be cared for until the [19] mother can resume care.

Excerpts from Deposition of Shirley Jenkins

The child behavior situation is very typically one in which the parents have been told that the child is in need of residential treatment and that will be a worked-out arrangement for the child to go into care.

The neglect case is often one in which the court is involved, in which an objection is raised and the child is removed from the home.

• • •

[21] There are cases where parents are actually very much opposed to the children going into care and those are primarily the cases where they enter by court. They know about it but they are against it.

[24] Q. Professor Jenkins, in your study Filial Deprivation and Foster Care, did you deal with the question of parents understanding foster care placement [25] or how they viewed foster care placement?

• • •

A. Yes. We did it in a variety of ways. That is, at the time children entered care, we sought to establish how parents felt about agencies and what they thought about placement and how they saw agencies with regard to child care.

We followed this up at the two later points. Then, after children had been in care a while, we asked them how they felt their children were being cared for. • • •

• • •

[27] A. The findings on the attitude questionnaire were that mothers and fathers agreed substantially that they saw agencies as facilitators of care. There were [28]

Excerpts from Deposition of Shirley Jenkins

small groups who said that the agencies were trying to take away the children, they were angry about that; and a very small group that said they wouldn't mind turning over children to agencies.

The vast majority of the parents said that agencies are good because they can help you out when you have trouble, they can help a child until he behaves better and is ready to come home; they can do things for a mother when she is not able to do them herself.

But overwhelmingly it was a temporary thing that they would help out. * * * parents expected [29] the children to come home.

Q. Professor Jenkins, the term "filial deprivation," could you explain that term? A. Yes. I coined that term to mean the experiences and reactions of parents when they are deprived of their children. In a sense it is a counter to the very popular concept of maternal deprivation.

Bowlby, who studied children in institutions, developed the idea that children suffer when they are deprived of maternal care. No one has looked at what happens to parents when children are removed. I felt that this was an important part of the total picture of family life.

* * *

[30] Q. What did you look to in the parents to measure what you call "filial deprivation"?

Ms. Lowry: Objection as to form.

A. We tried, in a very straightforward way, to ask parents how they felt when their children went into care. We tabulated and analyzed the feelings of mothers and fathers.

* * *

Excerpts from Deposition of Shirley Jenkins

[31] A. We found 87 percent of mothers, 90 percent of fathers saying they felt sad—and I won't read all the figures—but the majority of the mothers and fathers felt worried, nervous, empty and angry.

* * *

* * * this feeling was not a unidimensional thing so that you could feel sad, empty, angry, guilty, nervous, all at the same time.

* * *

[39] However, I also studied the feelings of parents when children were discharged from care. And here we found a complete reversal. 83 percent—

Just to go back, I questioned 110 mothers as to how they felt when their children were discharged from care. 83 percent said they were thankful, 68 percent said they were relieved. So those were strong expressions of feelings on discharge, thankfulness and relief.

* * *

[40] Q. You mentioned, Doctor, on direct [41] examination, that the overwhelming proportion of parents that you interviewed, viewed agencies as facilitators. A. Yes.

Q. Do you think, Doctor, that such an overwhelming view would persist if it was not anticipated that the child would be returned, or if there was doubt that the child would be returned, if you know?

* * *

A. No, I do not think that they would see agencies as facilitators if they did not see the—because essentially those questions were on the assumption that the child

Excerpts from Deposition of Shirley Jenkins

would be returned, that that was a temporary intervention in time of trouble or until a child behaves better. So that would not be my hypothesis.

• • •

[42] A. When we asked parents how they experienced the agency placement, we had many, many interviews. From the things that parents said, I would think that they looked most favorably on those agencies which they see worked toward the return of the child.

For example, parents have talked about experiences in agencies and the problems of getting the child back, and gave a negative view on situations where it is not easy to have your child returned.

• • •

[54] The problems of children cannot be isolated from their families, and I don't think the best interests of children are in conflict with the families, with their own biological families.

Granted, there are exceptions and times when a state must intervene. By and large, the best advocate for any child, in my view, is his or her mother and father.

• • •

[70] Q. What percentage of the families that you started out with, 390 families, were you able to follow up with throughout the entire study?

• • •

[71] A. Yes, the total number, 390, were interviewed at the first time. The total number that were interviewed five years later were 160.

• • •

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

Q. Do you have any information about how many children had returned home at the end of five years, with regard to 230 families, which is the difference between the 160 and 390? A. No, that information, I assume could be gotten from the Fanshel data on discharge. He focused on discharge questions, we did not. • • •

• • •

[75] We were concerned with personal reactions. We decided to do our final analysis just for the 160 mothers that we had seen in the beginning and later, but we did reach 257 families.

• • •

[4] EUGENE A. WEINSTEIN, PH.D., called as a witness, having been first duly sworn by John D'Alessandro, a Notary Public of the State of New York, was examined and testified as follows:

Examination by Miss Gans:

Q. What is your name? A. Eugene A. Weinstein, Department of Sociology, State University of New York at Stony Brook.

Q. Dr. Weinstein, what is your position in the Sociology Department at Stony Brook? A. I am professor of sociology and former chairman of the department.

Q. How long have you been at the university? A. Since 1968.

• • •

Q. Was your training also in social psychology? A. Yes, it was part of the training in sociology.

• • •

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

[5] A. Social psychology is an area of both psychology and sociology and people from both disciplines work in social psychology.

Q. Have you held any fellowships? A. Yes. I was Social Science Research Council Fellow and Russell Sage Foundation, Post-doctorate Fellow.

Q. Have you written any books? A. Yes. I have published two books, *The Self-Image of the Foster Child*,* and another *Independent Adoptions*, jointly with Helen Witmer and others.

Q. Have you published any articles? A. I published about three dozen articles dealing with various topics in social psychology including social psychology of child development and foster children.

• * •

[8] *Examination by Miss Lowry:*

Q. When did you do this research in foster care? A. I did it in 1955.

Q. Have you had any contact with the foster—any foster care system of foster children subsequent to that? A. Subsequent to '55 I had contact with adoptive agencies and adoptive children, yes.

• * •

[10] Q. Can you describe your study, *The Self-Image of the Foster Child*? A. Yes. I was interested in finding out the impact that this extremely complex and unusual situation had on foster children. The impact of

* R-91 Weinstein 3/18/75 Exhibit A.

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

the situation in which children were confronted by three sets of adults; their biological parents, the foster parents and representatives of the social agency, each of them had responsibility for their care.

I was interested in finding out how children saw themselves in this kind of complex situation and what relationship, how they saw themselves and their experiences in the placement situation and to how they were developing in foster placement.

Q. Were the children you studied in foster care for a year or more? A. Yes. They were all at least five years of age or older and they all had been in placement for at least a year or more.

• * •

[11] A. Well, some children identified with their foster— with their foster parent, some children identified with their parents, their regular biological parents, depending upon conditions characterizing the placement situation and so on.

Q. Could you describe the variables? A. Yes. The chief variable was whether or not the parents visited regularly. If the parents visited regularly, then the children tended to identify with the parents. When they did not, when the parents did [12] not stay in the situation, they tended to identify with the foster parents—but it depended upon the visiting parents.

Only in a few cases did it occur that foster children identified with their foster parents when there was also some contact being maintained with the natural parents, regular contact being maintained with the natural parents.

In those cases—in those cases it depended upon the relative proportion of the child's life that he spent in

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

foster care as to whether he would identify with his foster parents or not.

All of them, I point out that all of the findings that I am describing here meet statistical criteria for reliable findings, that is, that it is extremely unlikely that they could have occurred by chance alone.

• * •

[15] Only in cases where the child spent half of his time, life in foster care, did foster children identify with their foster parents when their natural parents remained in the picture.

Q. In your study, was there a difference in the level of adjustment or development of the children who identified with their natural parents and those who didn't? A. Yes. Children who identified with their natural parents on the average were seen as doing much better, as having higher levels of well-being than children who identified with their foster parents.

• * •

[17] Q. Is identification, is the way you use the term "identification," is that related to the term "emotional bond"? A. Yes, quite clearly.

It relates to who the child sees as loving him, who the child feels love for. Yes, very much so.

• * •

[19] Natural parents are important to foster children when they have formed a prior relationship with them.

I have had over and over and over and over again cases of children who would defend to me the reasons for their being in foster care, express their expectation that of

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

course they would return home—even children who had had been in placement over half their lives who identified with their biological parents in the sense of seeing them as the people or person who they felt was most closely attached to them psychologically, emotionally, and [20] they felt most emotionally attached to themselves.

If you talk to the children themselves, get any sense from the children themselves, it emerges very clearly that this is something very important to them.

Q. On the basis of your study, would you say that the fact that a child has lived with a particular foster parent for a year is in any way determinative of the attachment or identifications of that child with the foster parent or with its own parent? A. The evidence of my study would contradict any conclusion that the attachment of a child to its natural parents is dissolved or replaced by attachment to foster parents after a year's stay in foster care.

• * •

[22] A. My data would imply that the costs to a child of being pushed to abandon its relationship with its natural parents or the failure to take advantage of opportunities to return the child to its natural parents when the child has an attachment to them would be riskier than leaving them in a foster home automatically by virtue of the fact that he has spent one year in that home.

Q. On the basis of your study and experience, what are the reasons to account for the tendency you found for children to continue to identify with their biological parents when in foster care?

• * •

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

There are two lines of theoretical argument that would make such findings understandable to us; one is importance in Freudian theory of early attachments [23] and the tendency for these to persist, but there is also another more social psychological as opposed to clinical reason for this—biological parenthood is of value in our society. Children in foster care are quite aware of the fact that they are different and that difference is something that is devalued. Children come to learn that being with one's biological parents is an important aspect of identity something that they take on as ordinary members of society. I mean it is a stigma for them.

They often have a visible sign of the stigma, of the difference between their last name and the last name of the people with whom they live.

Q. Dr. Weinstein in your book *THE SELF-IMAGE OF THE FOSTER CHILD*, you speak of the placement situation as a social system.

Could you please explain what you mean by that? A. By that I mean that foster care is a complex network of relationships. The child, the agency, foster parents, biological parents, and that these relationships are interconnected so that what occurs in one pair in the set has reverberations for other relationships in the network, what occurs between the [24] agency and foster parent which may affect the natural parent, the child. That is essentially what I mean by social system as over and against isolated parent-child relationship or two, competing isolated parent-child relationships.

• * •

[27] Q. Doctor, in your opinion, what would be the consequence of changing the foster care system by giving

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

foster parents automatic standing to keep—to try to keep the child after one year? A. The threat of possible legal action and the possibility of that, placing a child in foster care would lead to the loss of one's child will undermine one aspect of the ideal or the kind of model foster care system that I have talked about.

This means that parents of foster children, most of whom are poor, will face the possibility of legal action to recover their children which will put them in a very difficult kind of situation.

There is this possible consequence.

[28] There is another possible consequence and that is a consequence for people who become foster parents. This is the danger that the foster care system would be undermined and converted into a kind of a semi-adoption system as the need for adoptable children, the pressure for adoptable children grows and grows and grows with abortion and contraception decreasing the supply of available children.

So that such a practice could become in fact a means for taking children from poor parents and providing some of the relief from pressures for adoptable children, which is not what the foster care system was intended to provide at all.

It also is likely to lead to an increase in long-term foster care which is not a good situation for children.

Q. Could you explain why you don't believe that foster—long-term foster care is a good situation for children?

• * •

[29] A. Because it perpetuates what is essentially an ambiguous situation and one in which there is not protection for another kind of right, that is, a long-term foster

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

placement can be terminated at the will of the foster parents.

This is not the case for natural or easily the case for natural or adoptive parenthood, so that the ordinary protection of adoption and natural parents are not available to a child in long-term foster care. It is an ambiguous situation in which—well, just an ambiguous situation which is apt to have deleterious consequences.

• • •

[38] Q. Do you have any information how many of these 61 children had been in more than one foster care setting of any sort during the time they were in placement, including other foster home or any kind of congregate foster care facility? A. Yes, • • •

Q. When you examined for identification with regard to whether the child identified with the natural parent or the foster parent, did you control for the variable of whether the child had been in multiple foster care settings? A. There was no relationship between multiple foster—being in multiple foster care settings and pattern of identification; • • •

• • •

[39] Q. Is it your testimony that if a child had been in one foster care setting for the entire period of placement there was no greater identification with the foster parent than if the child had been in a number of foster care settings? A. That is right; if the natural parents visited.

Q. What about if the natural parents did not visit? A. Then who the child identified with depended upon the proportion of his lifetime that he had spent in his current foster home.

Excerpts from Deposition of Eugene A. Weinstein, P.H.D.

[46] Q. I asked whether there was a emotionally significant relationship with the foster parents. A. Yes, if the child had spent a significant portion of his life in the foster home.

Q. You testified that you thought it would not be good for children if there were a right in foster parents to a hearing after a one-year period; is that correct? A. Yes.

Q. Do you believe that to be true, both in the instances in which a child's—a child is to be moved to a foster home to return to a natural parent and in the instances in which a child is to be moved from the foster home to another foster care setting? A. I think these are very much different situations.

• • •

[48] Q. Dr. Weinstein, do you think that continuity is important in a child's life? [50] A. In general, there are lots of benefits that children get from continuity in many areas of their lives.

• • •

Would it be important not to interrupt the natural family relationship if it were in any way avoidable?

• • •

I think it important not to interrupt relationships in which children formed deep attachments.

• • •

Excerpts from Deposition of Robert Catalano

[4] ROBERT CATALANO, called as a witness, having been first duly sworn by the Reporter, was examined and testified as follows:

By Mr. Kantor:

• • •

Q. By whom are you employed, Mr. Catalano? A. State of New York, Department of Social Services.

Q. In what capacity? A. Research Analyst.

• • •

[10] *By Mr. Bienstock:*

Q. Mr. Catalano, the conclusions reached in this report, State's April 14, 1975 Exhibit B, they are your own, are they? A. I tried not to reach any conclusions; I just wanted to present what we had there and write a little analysis of it.

Q. The analysis is your own? A. Pretty much. It all gets pretty heavily edited.

• • •

[15] *By Ms. Gans:*

Q. Mr. Catalano, what training do you have? A. Formal training?

Mr. Bienstock: Did you go to college?

The Witness: Four years of college; I was a mathematics major.

By Ms. Gans:

Q. Do you have any other training? A. No, I do not.

Excerpts from Deposition of Robert Catalano

[16] Q. I would like to ask you some questions about Exhibit B. That is, specifically page 1 of the highlights, you said abandonment and neglect are the most prominent conditions in foster care. A. That is right.


Q. With respect to Chart 1,* I would like to show you dependent and neglected. Could you read back the breakdown of those cases?

Mr. Bienstock: Objection as to form. Document speaks for itself.

* At p. 117a.

Excerpts from Deposition of Robert Catalano

*EXHIBIT B—CHART 1

(Opposite) 

* From Exhibit B:

HIGHLIGHTS

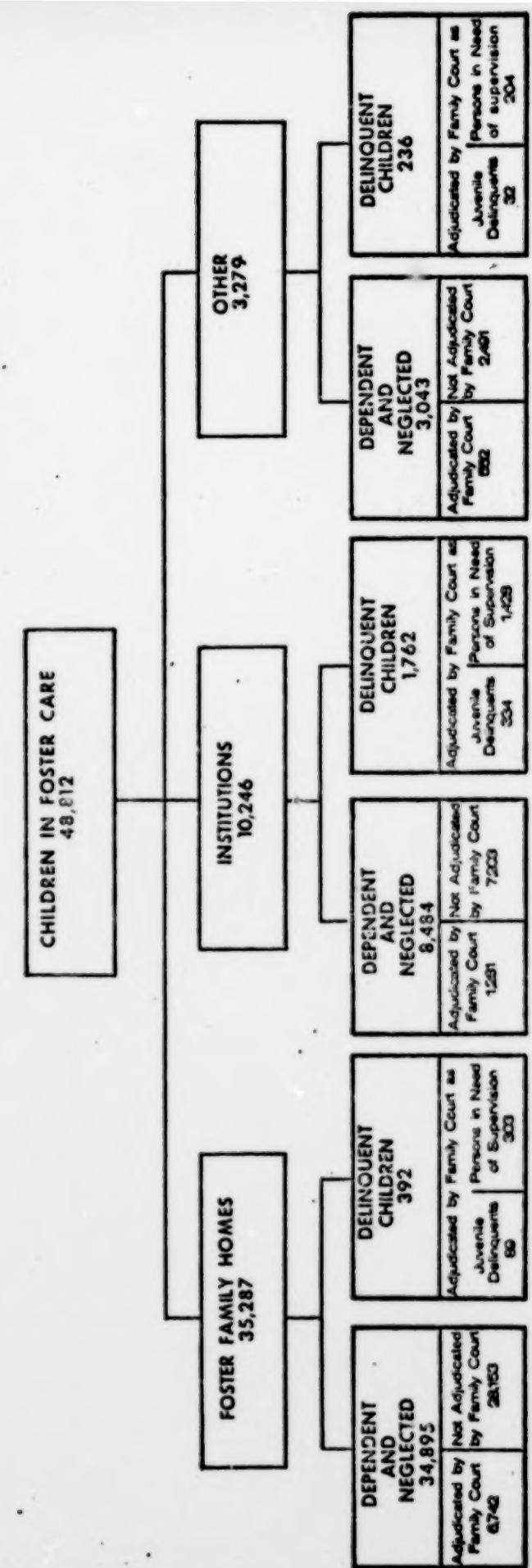
"Abandonment and neglect are the most common conditions prompting admission to foster care; children admitted because of these reasons remain in care longest."

"... The median length of stay for dependent and neglected children in foster care at the end of 1973 was 4.38 years. This compared with 3.63 years for those admitted because of special problems and 2.93 years for children receiving "temporary" care. Among those leaving foster care fastest are unwed mothers, juvenile delinquents and persons in need of supervision (PINS), with 68, 64 and 48 percent of these children, respectively, having been in care less than one full year as of the end of 1973. ..."

"A comparison of caseloads reveals that children admitted to foster care for any reason were inclined to remain in care longer in New York City than children admitted for the same reason Upstate."

CHART 1

CHILDREN IN FOSTER CARE UNDER THE SUPERVISION
OF THE NYS BOARD OF SOCIAL WELFARE AND THE NYS DEPARTMENT OF SOCIAL SERVICES
DECEMBER 31, 1973



NOTE: At the end of 1973 there were, in addition to those enumerated above, 6,155 delinquent children in the New York State Training School System supervised by the New York State Division for Youth. These children, along with those in institutions providing temporary or special services such as schools for the deaf, convalescent homes and temporary shelters, are excluded from this report.

117a

Excerpts from Deposition of Robert Catalano

Ms. Gans: Since I would like to ask some questions about the category, I think it makes sense to get it on the record.

Mr. Bienstock: The document is in the record; that is exactly the point.

By Ms. Gans:

Q. Mr. Catalano, isn't it a fact that the category "dependent and neglected children" is broken down into cases adjudicated by the Family Court and those [17] not adjudicated by the Family Court? A. That is correct.

Q. And in the category "not adjudicated by the Family Court", does that mean there has been any adjudication of abandonment or neglect?

• • •

The Witness: We are just using the general terms as opposed to PINS and JD's as how we generally use them and—

By Ms. Gans:

Q. Are you familiar with the category called voluntary foster care placements? A. I have heard the term.

Q. Does that involve an adjudication, to your knowledge? [18] A. No, the term "voluntary" is not involving the courts.

Q. All right. Is it true that your reference to abandonment and neglect is the common reference, in fact, to the category dependent and neglected? A. Right.

Q. Yes, but in fact there have been no adjudications for 28,153 children out of 34,895 in the category? A.

Excerpts from Deposition of Robert Catalano
Excerpts from Deposition of Dr. Stella Chess

Among the 34,895 dependent neglected in foster family homes, 28,153 were not adjudicated.

Q. Do you use the term abandoned, dependent and neglected interchangeably? A. In some cases.

Q. But when you do that, you do not, in fact, know whether abandonment, neglect or dependency was involved? A. In legal terms?

Q. Yes. A. I do not.

• • •

560 First Avenue
 New York, New York
 April 7, 1975
 11:30 A.M.

DEPOSITION of DR. STELLA CHESSE, held at the above place and time, before a Notary Public of the State of New York.

[2] DR. STELLA CHESSE, called as a witness, having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

Examination by Ms. Lowry:

• • •

[4] Q. Have you written any books or articles in your area? A. It is just as easy to get a CV, because I have written a lot. I have written An Introduction to Child Psychiatry, Psychiatric Consequences of Congenital Rubella, Behavioral Individuality in Early Childhood, Temperament and Behavior Disorders, and How to Help Your Child Get The Most Out of School.

Excerpts from Deposition of Dr. Stella Chess

I think that's the books. And I have been co-editor of a series called, Annual Progress in Child Development, Child Psychiatry, of which there have been eight volumes.

• * •

[5] Q. What is your present position? A. Professor of Child Psychiatry at New York University Medical Center.

• * •

[12] Q. Dr. Chess, do you have any estimate on the number of children you have evaluated and/or treated during your professional career? A. I do have the number in a paper I just wrote, because I reviewed all the kids.

I think it's something like 5,000.

• * •

Q. Were any of these children, children who were in any kind of a foster care setting? A. Yes.

• * •

[17] Q. What affect does the existence of blood ties alone have on the development of the emotional attachment? A. There is no automatic relationship between blood ties and functioning.

Now there may be people who would only give affection to a child to whom they have a blood tie. In that case, it would have a secondary affect.

As far as the child is concerned, he is responding to what in fact happens.

• * •

[19] Have you had any experiences observing foster parents and foster children in which there has been a significant emotional relationship between the foster parent and foster child?

• * •

Excerpts from Deposition of Dr. Stella Chess

A. Yes.

• * •

[20] Q. So it would be possible in your professional opinion for there to be, depending on the individual circumstances of the child and the relationship and the child's history and all of the variables that you have referred to, it would be possible for there to be a [21] significant and emotional attachment in a foster parent-foster child as in a biological parent-biological child? A. Yes.

And the adverse.

Q. Is it possible for there to be an absence of significant emotional attachment between a child and the child's biological parent?

• * •

A. Certainly there can. Certainly there can, if you have a parent who is psychiatrically ill and incapable of making an emotional attachment, you would have, you know, you would have an absence of one, and the other thing would be if they hadn't been in touch with each other, I mean if they just had—if the child hadn't been in the care of the biological parent, that person would be a stranger, there would be no relationship. These would be the [22] main circumstances.

Q. Are you familiar with the term "psychological parent"? A. Yes.

Q. And can you briefly explain what your understanding of that term is, "psychological parent"? A. The term refers to there being an attachment between child and adult taking care of the child as a parent-child relationship, and that this has been developed over a period of time, all the things that I discussed before, you know, in

Excerpts from Deposition of Dr. Stella Chess

terms of development of ties having occurred between that particular child and that particular adult.

Q. In your opinion, can this relationship develop in the absence of a blood relationship? A. Yes.

• * •

[23] Q. Would the passage of time be likely to strengthen this relationship?

• * •

A. If it is a good one, yes.

Again, it depends on the nature of the relationship. It could be the opposite.

Q. What effect, in your professional opinion, would it be likely to have on a child to remove him from adults with whom he has formed a psychological relationship, a positive psychological relationship? A. We are talking about immediate effect or long-term effect?

Q. Both. A. Both. The immediate effect would be distress, I mean, if you take a child away from the people who are his bonds, you would [24] have immediately distress.

The long-term effect is where all the things I said before also pertain. It would depend on what was the nature of the circumstance to which the child went, whether this were the first such separation or not, that is, if the child were repeatedly taken from the people to whom he had developed bonds and removed and then back again.

• * •

I would tend to say that there ought to be a very good reason for doing it before such a thing is done. Such a thing should not be done lightly and basically a child who

Excerpts from Deposition of Dr. Stella Chess

is a normal, healthy child and had proven himself capable of forming attachments to one set of parents might in the long run be able to develop equally strong attachments to another set of parents as long as this hadn't been a repeated thing.

On the other hand, it could be utter disaster depending on the nature of the new [25] living set of circumstances and whether the new parents' handling was consonant with the child's needs or not, or whether this was one in a series of removals in which the impermanence was more dominant than the question of the details of what went on between the child and parent.

Q. What impact would a series of removals be likely to have on the child's development? A. Again the details do indeed depend on the age of the child but a series of removals are highly likely to interfere with the child's ability to learn a degree of predictability, to develop a sense of expectation of what behaviors are approved of and what behaviors are disapproved of, to learn a sense of security of expecting that if he behaves in a certain way he will get positive feedback in a sense.

Repeated removal of a child from one situation to another, even if they are basically good situations, you know, other than the fact that they are different, if they are repeated they are highly likely to deprive the child of an ability to form close relationships • • •

• * •

[26] Ms. Gans: • • • Neutral foster homes are not an issue in this case.

Ms. Lowry:

Q. In terms of a child's development, do you have any opinion on the use of so-called neutral foster homes to

Excerpts from Deposition of Dr. Stella Chess

which a child may be removed after he has formed a strong attachment with foster parents?

• * •

[27] Q. Do you have an opinion of the effect on the child of removing him from a foster home in which he has formed strong emotional ties to a neutral foster home?

A. I don't think it's a good idea. If a child is going to be removed, it means into a void, an emotional void.

It is equivalent to somehow communicating to him that emotional ties are not proper, and that's antithetic to what we want children to learn.

• * •

[28] Q. Do you think children are capable of forming judgments about where they want to live?

• * •

A. Some children are and some aren't.

Q. With regard to a child who is capable of forming, in your opinion, who is capable of forming a judgment as to where they want to live, how important is it to consider the child's opinion in a decision with regard to where the child should live?

• * •

A. I would listen very carefully but I wouldn't automatically act on it. I mean, again it is a situation where you have to evaluate the total circumstances and the child cannot be expected to be aware of the totality of the circumstances, so that his [29] reaction is bound to

Excerpts from Deposition of Dr. Stella Chess

be on the basis of only that segment of experience that he has been through.

• * •

Q. Do you have an opinion as to whether a decision to remove the child from a foster home in which the child has been living should be reviewed prior to the actual removal of the child or subsequent to the removal of the child with regard to the effect of such a move on the child? A. It seems to me that it should be reviewed beforehand because any removal should be carefully thought out and be to a new place which is going to be the permanent place, if at all possible.

• * •

[31] Q. Would the initial removal, in your opinion, be likely to cause some damage to the child even if the child were later returned? A. It has a probability. I wouldn't, you know, in some cases it might be made up, but it has enough of a probability, so I don't think it should be done lightly.

Q. Based on a child's psychological development, how important in your opinion is it to have the decision to remove a child from a foster home carefully made? A. Very important. Very important. It [32] should be a primary tenet of our principal people who have children's lives in their responsibility.

• * •

Ms. Gans: • • • The word "carefully" is vague.

Q. Are you familiar with the book, *Beyond the Best Interests of the Child*? A. I just read it.

• * •

Excerpts from Deposition of Dr. Stella Chess

Q. Which, if any, of the conclusions, do you agree with?

A. I agree with the importance given to the psychological parent as a factor to be taken into account.

You want me just to stick to the ones I agree with, not the disagreements, at this moment?

Q. Yes. A. I agree with the conclusions that children should not be repeatedly removed from one place to another place to another place.

I think those are the two main conclusions [33] that I would agree with. . . .

Q. On what do you base your agreement with these conclusions? A. On both the theory and the observation that children do develop their sense of identity, their sense of conscience, their sense of ability to develop meaningful relationships by consistent experiences with the same group of people, small group of people, and in that sense what they discuss there is in agreement with what I have both learned and seen to be the case.

Q. Generally what conclusions in the book do you disagree with? A. I think that it is a too unidimensional statement to say whoever is at any given moment the child's psychological parent should remain so. It doesn't give credence to all the other factors that might be involved in one given child's case, and I think that there may be situations when it is simply not the best thing for the child.

. . .

[34] There is also more minor disagreement, but I suppose the part that there isn't enough weight given in the discussion to the variation in children's adaptive capacities.

. . .

Excerpts from Deposition of Dr. Stella Chess

[40] Doctor, is it possible for a child to simultaneously have a psychological parent-child relationship with more than one set of [41] parents?

. . .

A. . . . It is possible for children to develop strong psychological ties to, I think, more than one set of parents, depending on a whole set of circumstances.

Q. What circumstances would it depend upon? A. On whether each one reinforced the other, each set of parents reinforced the tie with the other.

. . .

I have seen this where it has happened where the foster parents continually spoke of, in this case it was the mother, with great [42] affection and made sure that the child didn't feel that the mother had abandoned it. . . .

. . .

[59] A. Initial decisions can be wrong because they can fail to take into account certain, you know, totality of facts which sometimes come out in later discussion.

I would say again that I don't really think it is right to dislodge a child until it is very certain that the place to which he is to go is to be the place that is to be permanent.

. . .

[64] *Ms. Gans*:

Q. . . . could you predict just from the fact of a child and the fact that foster parents are licensed to be foster parents—

. . .

Excerpts from Deposition of Dr. Stella Chess

Q. —that an emotional tie will develop? A. No, that wouldn't be enough.

Q. Could you predict if a child is in a foster home for a year, again discounting all the other factors, that you could predict [65] that there is an emotional tie between that child and the foster parent? A. You say discounting all the emotional factors?

Q. That's right.

* * *

A. If you are discounting that, then I would say a year should certainly be enough to predictably develop an emotional tie, but, as I said, there could be exceptions.

There could be children for whom, because of their previous experience, it would take more than a year for the emotional tie really to be solidified.

* * *

[66] Q. Could you predict that solely on the basis of the fact that the child has been in that foster home for a year that that is the more important relationship than the child's relationship with its parents?

* * *

A. No.

* * *

Q. In general, would you worry about [67] children going home to their family after a year?

Ms. Lowry: The witness has already testified she can't answer that question.

A. It would depend on what home was like, how permanent this was to be, whether the factors that led to the

Excerpts from Deposition of Dr Stella Chess

original placement are likely to recur, whether there was a positive relationship between the child and the parent before the, you know.

* * *

[72] Q. If a child is in foster care, understanding, as you said earlier, that it is a temporary situation and that he will go home, is prolonging its return a disruption of expectations?

* * *

A. If this is a child whose tie to his home has been maintained and the parents want him back and he wants to go back, certainly under these circumstances, to prolong the separation would make it hard on the child.

* * *

Q. In this lawsuit, I believe it was Dr. Goldstein who testified that, correct me if I am wrong, in a child under six years of age, [73] a separation from its own parents of six months was enough to undermine the child's own relationship with its own parents and replace that with an attachment to the foster parents.

* * *

[74] A. No, I don't think one could automatically predict that this would be the case.

Q. In your opinion, can a child who has established an attachment to his own parents, assuming there is continued contact, maintain the relationship with its own parents, maintain the attachment to its own parents for more than eighteen months in foster care?

* * *

Excerpts from Deposition of Dr. Stella Chess

[75] A. You don't duplicate in a visit the routines of what goes on in life, but the ties certainly can be maintained.

* * *

[76] Q. Is the question of the effect of separation on a child a matter on which child psychiatrists agree or scientists agree, or is this a subject of controversy?

* * *

A. * * * There is a considerable degree of controversy on that.

* * *

[84] A. * * * [Y]ou can't just say the word "separation" and immediately know that without having defined all the rest of the circumstances that you are creating havoc.

* * *

[85] Q. Is it also possible for a child not to have a meaningful relationship with a foster parent?

* * *

A. A perfectly normal child might go into a foster home and, for reasons of the way in which the foster parent cared for the child, refrained from making an emotional bond, the child might very well, might not form an emotional bond, and it might be a bad foster (86) home, in which case the child might form a rather negative attitude and not form an emotional bond.

* * *

Appearances

84 Fifth Avenue
New York, New York

April 9, 1975,
3:00 P.M.

EXAMINATION of the Defendants, by MARY JANE BRENNAN, taken pursuant to Notice dated March 27, 1975, before a notary public of the State of New York.

[2] Appearances:

NEW YORK CIVIL LIBERTIES UNION
Attorneys for Plaintiff Foster Parents,
84 Fifth Avenue,
New York, New York 10011
By: PETER BIENSTOCK, Staff Counsel.

COUNTY ATTORNEY OF NASSAU COUNTY,
Nassau County Executive Building,
West Street,
Mineola, New York 11501
By: JACK OLCHIN,
Deputy County Attorney

LOUIS J. LEFKOWITZ, Esq.,
Attorney General
2 World Trade Center,
New York, New York 10049
By: STANLEY KANTOR,
Assistant Attorney General

MARTIE LOUIS THOMPSON, Esq.,
Community Action for Legal Services, Inc.,
335 Broadway,
New York, New York 10013
By: Ms. LOUISE GRUNER GANS, of Counsel.

Mary Jane Brennan—for Plaintiff Foster Parents—Direct

MARY JANE BRENNAN, having been duly sworn by a notary public of the State of New York, testified as follows:

Direct examination by Mr. Bienstock:

• • •

[4] Q. Within your agency, who makes the decisions to remove children from particular foster homes?

• • •

[5] A. • • • So, there would be at least two levels of administration involved in that. If the child were to be removed from a foster home and the foster parents were not in agreement with this, then they would be given every consideration according to the state guidelines which we observe and there would be a hearing at their request and at the hearing the assistant director would preside.

• • •

[6] Q. What are the minimum educational requirements for the first level, the case worker? A. Bachelor's Degree from an accredited college.

Q. Is there any particular subject in which the Bachelors Degree is required to be? A. I do not believe so.

• • •

[11] Q. I would like to ask you some questions about the decision to remove children from particular foster homes.

What standards govern the decision to remove a child from a particular foster home?

• • •

A. Well, there are a number of factors that are taken into consideration. First and foremost, most of the children who are in placement in our department under the auspices of our department are placed with us voluntarily by their parents. We operate under the laws of

Mary Jane Brennan—for Plaintiff Foster Parents—Direct

New York City and the mandates of the State Department of Social Services. Therefore, if a child has been voluntarily placed and if the parent is requesting that place for the return of the child to him or her, to them, unless there was strong compelling evidence that that child should not be returned, we would work with the parent and the foster parent and the child towards the return of the child home.

[12] • • • then our goal will be to return that child to his own family just as quickly and efficiently and sensitively as possible and the parent will understand this, the foster parent and the child.

• • •

Q. When a child is moved from a particular foster home to another foster home or to an institution, what are the standards that govern that decision? A. Well, there is often one very simple one and that is the foster parents insistence that [13] the child leave the foster home. That is one of the major reasons why children go from one foster home to another.

Another reason can be if the child is having—not having his needs properly met in the foster home, if he is not developing properly, if he is not being fed properly, if there is difficulty or problems, that sort of thing.

Another would be if the child has been harmed or abused, there are complaint problems in relation to that.

Q. In the foster home? A. In the foster home, right.

• • •

[17] Q. When your agency decides to remove a child from a particular foster home, how is that decision communicated to the foster parent? A. It is usually communicated to the foster parent verbally by the worker for

Mary Jane Brennan—for Plaintiff Foster Parents—Direct

the child who is visiting in their home on a regular basis. In other words, in terms of our goals to effect permanent plans for all of these children, the foster parents are very much a part and a partner in this.

Q. Is the decision usually also communicated to the foster parent in writing? A. In conformance and in compliance with the state's mandates, they are. * * *

* * *

[19] Q. Are the reasons for the removal of the child from a particular foster home communicated to the parents in writing? A. To the foster parents?

Q. Yes. A. I do not believe so. They certainly would have been discussed, however, * * *

* * *

[20] Q. If the foster parents do not agree with your agency's decision to remove the child, what recourse do they have? A. They have the recourse that is provided in the mandates of the law and as we see from this, the form, the notice of removal or agreement to remove child form, they can indicate in writing that they agree to it and they waive their right to notification or that they have read it and they request a conference with a social service official prior to the proposed [21] removal.

* * *

[23] A. Of my knowledge, the assistant director related to the situation is the person with whom the foster parents have the conference. If the foster parents request that the supervisor and the worker be present or that they not be present, their wishes are honored.

* * *

Mary Jane Brennan—for Plaintiff Foster Parents—Direct

[29] Q. Are they told prior to the conference, Miss Brennan, on what basis the assistant director who makes the decision after the conference will make the decision?

A. I don't really know if I can answer that. That the hearing is one of the steps in this and the purpose of the hearing is to hear what the foster parent has to say and any information that is developed there that maybe is new or different or whatever is what would be taken into consideration.

* * *

[30] A. The functions of the conference is to give the foster parents every opportunity to present their views and reasons as to why they disagree with the agency's decision to remove the child and I would like to add also since it would not come to that point, if both the foster parents and the agency were in agreement, it would be a further opportunity for the department to interpret to the foster parents why the department had made that plan.

Q. By interpret, do you also mean explain? A. Yes. I think you can say that.

* * *

[31] Q. If the person holding the conference—very often isn't it true that the person holding the conference is the person who has made the decision?

* * *

A. The person holding the conference has most definitely participated in the decision.

* * *

Mary Jane Brennan—for Plaintiff Foster Parents—Direct

[32] Q. It is not an unusual practice for a supervisor to discuss the facts of a particular case with an assistant director prior to the conference, is it?

• • •

A. It is not.

[35] Q. What is your agency practice with regard to permitting foster parents to view agency records prior to the conference? A. It is not our practice to have anyone review our case records unless they have been subpoenaed or unless they should fall under the Freedom of Information Act.

• • •

[36] Q. Where a decision is made in whole or in part based on agency records, the answer would be the same? They are still not permitted to view the agency records; is that right? A. I would suspect so.

Q. • • • Could you describe what goes on at a conference, the procedure, who starts, who explains first, who answers, in as much detail as you can? A. I really couldn't because I have never been present during one of those conferences.

Mr. Kantor: On the basis of that answer I move to strike the entire deposition that occurred after the individual was identified as Bureau Chief of the Children's Bureau of the Nassau County Department of Social Services.

Ms. Gans: I join in the objection.

• • •

[39] Q. Are the standards for the decision both the same before the conference and after the conference? A. Yes.

Mary Jane Brennan—for Plaintiff Foster Parents—Direct

Q. Are those standards in writing anywhere? A. I would think not.

• • •

[41] Q. Are the reasons for the decision stated in writing when the decision is communicated in writing? A. I do not believe the reasons for the decision are listed.

Mr. Kantor: Again I move to strike so much of the answer as it is based on belief.

Ms. Gans: I join in the objection.

• • •

Q. How long have you been in your present position? A. About nine months.

• • •

[88] A. Does the worker use the record in making a decision to remove a child?

Q. That's right. A. The decision to remove a child is not made by the worker alone, number one. A worker's activities regarding a case are recorded in the case record. A worker should review the record. The supervisor reviews the record, the assistant directors review the record in addition to verbal exchanges among those parties.

• • •

[89] Q. Do you sometimes return a child home where there has been no contact between the mother and child? A. I think that would be very unlikely that there would have been no contact. As I mentioned earlier, we make a very zealous effort to involve all parties to this in the implementation of this plan.

• • •

Plaintiff's Exhibit 1

CHILDREN'S BUREAU
County Seat Drive, Mineola, New York 11501

Charles A. Langdon
Executive Director

Mary Jane Brennan
Administrative Director

AGREEMENT TO REMOVE CHILD FROM FOSTER FAMILY CARE

June 26, 1974

Name of Child: Cheryl Wallace

Date of Birth: 9/14/62

Name of Foster Parents: George and Dorothy Lhotan

Address: 10 Vassar Lane, Hicksville, N. Y.

In accordance with the New York State Department of Social Services (Regulation 450.14), we wish to notify you of the Agency decision to remove Cheryl Wallace, a foster child, from your home. This will serve as the 10-day notification of removal on or after July 9, 1974.

If you are not in agreement with this decision, you have the right to request a conference with a Social Services official to have the proposed removal reviewed. Your request for such conference must be made within five days of receipt of this notice.

• • •

Plaintiff's Exhibit 1

I have read the above and object to the removal and request a conference with a Social Services official prior to proposed removal.

Witness

Foster Father -----

Foster Mother -----

• • •

Appearances

STATE OF NEW YORK
COURT OF CLAIMS [sic]

Organization of Foster Families for
Equality and Reform, et al.,
Plaintiffs

—against—

JAMES E. DUMPSON, et al.,
Defendants

and

NAOMI RODRIGUEZ, et al.,
Intervenor-Defendants

Examination Before Trial of Peter Mullany, held pursuant to Order, in the offices of the New York State Department of Social Services, 1450 Western Avenue, Albany, New York, commencing at 10:00 A.M. on Monday, April 14, 1975, before Deborah M. Sawitzki, Court Reporter in and for the State Of New York.

• * •

Examination Before Trial of Peter Mullany

[4] PETER MULLANY Esq. called as a witness, first having been duly sworn by the Reporter, was examined and testified as follows:

By Mr. Kantor:

• * •

Q. Mr. Mullany, would you tell me by whom you are employed? A. The New York State Department of Social Services.

• • •

Q. And in what capacity are you employed? A. Assistant Counsel.

• • •

Q. Can you tell me what your duties are as Assistant Counsel? A. My duties are to generally supervise the Bureau of Administrative Adjudication which is generally [5] responsible for the scheduling, conducting of fair hearings, and issuance of decision Statewide.

Q. Would those fair hearings that you are responsible for scheduling and conducting include hearings under Section 400 of the Social Services Law? A. They do.

Q. And are you familiar generally with the issues and procedures involved in adjudicating Section 400 fair hearings? A. I am.

• • •

[7] Q. Why do you break out the Section 400 hearings and treat them differently? A. Number one, they tend to be a great deal longer than a regular public assistance hearing. They tend to involve, obviously, different issues than you are going to find in a public assistance fair

Examination Before Trial of Peter Mullany

hearing. They require a more specific expertise than the general public assistance fair hearing does and, for those reasons basically, we handle [8] them separately.

Q. If you know, can you tell me on the average how long a Section 400 fair hearing runs? A. I would have to say, to the best of my knowledge, there is no real average. They tend to either be very, very short or very, very long, and the reason for the difference, I think, is depending at what stage of the case the hearing is held at. For example, if it is a case—and we have them—where from the time the hearing has been requested or even prior to that time, until it has been scheduled a Family Court may intervene and direct placement of the child; for example, return the child to the natural parent. In those types of cases, the hearing itself would not tend to be as long as when there is still a dispute. I could not give you an average elapsed time.

Q. In those instances where there is a dispute, could you give us an average of the length of time the hearing takes? A. The minimum would be one day; very likely more than one day.

[9] Q. Within the past 12 months, if you know, how many Section 400 hearings have been conducted by your bureau?

• • •

Q. To the best of your knowledge? A. This is an estimate: It would be somewhere in the neighborhood from 12 and 20 requested.

Q. And how many, to the best of your knowledge or estimate, are actually held and go to adjudication? A. I would say probably—again this is an estimate—60 to 70 percent of the 12 to 20 estimate.

Examination Before Trial of Peter Mullany

Q. So, I take it, then, it would be somewhere between seven to ten? A. Somewhere in that neighborhood, as a very small number of the total number of cases we have.

• • •

[15] *By Mr. Bienstock:*

Q. Could you tell us, based on your best estimate if you have one, how long a period of time elapses between the request for a fair hearing and the final determination in the 400 fair hearings? A. Limited to 400 fair hearings. That is a very difficult question to answer, and I cannot answer it. There are about six reasons I cannot answer it; one is cases are adjourned. They are adjourned at the request of either party for anywhere from a week to a month, which is going to elongate the period.

Secondly, depending upon the type of hearing involved and its length, obviously, the amount of time the hearing officer is going to be required to prepare his report is going to vary. A four-day hearing with numerous exhibits and documents and necessity of a transcript, et cetera, is going to require the passage of time. I do not know in any given [16] situation what the average is from the date of request to the date of disposition; also, that our ability to hold and issue decisions in this field is colored by the fact we are required to hold the remaining 35-, 36,000 hearings annually within time frames as established by Federal and State regulation and Federal courts.

Q. Generally, is the decision time, meaning time from request to decision in foster care hearings longer or shorter than in public assistance hearings, if you know? A. It is, on an average it is probably longer.

• • •

Examination Before Trial of Peter Mullany

[18] Q. What types of specific issues, based on your fair hearings and the fair hearings that Mr. Buckley has conducted that you have reviewed, are to be resolved or have been resolved at these fair hearings A. Well, you know, it is awfully hard to pinpoint an actual factual issue. Again you are talking about a series of facts which do or do not result in a determination of the agency, a justifiable determination to remove a child. It is not generally one fact. In one case it can be the presence in the family of, you know, another child, a natural child whose interest and whose activities are adversely affecting the foster child. In another case it could be a question of excessive utilization of corporal punishment on a foster child which would justify removal; then, a lot of cases are cases where the actual complaint of the foster parent is not that the child is being removed but that the foster parent has taken such an interest in the child that what he is actually seeking is an adoption preference when the agency does [19] come in and determine to remove the child for adoption by someone else.

The issues generally are not, except for the possible exception of corporal punishment situations, is generally not a question of dispute; in fact, most of the cases, for example, involve cases where the agency has determined to remove the child and return the child to its natural parent who voluntarily had the child placed. In that case, the foster parents are not objecting so much to the removal on the basis of the child going to his natural parent, they are objecting on the basis that they have acquired an affection and love for the child which they feel should justify them in retaining the child. It is not a contest.

• • •

Examination Before Trial of Peter Mullany

[20] *By Ms. Gans:*

Q. I believe you testified that sometimes you have a request for a 400 hearing and then there is an intervening court order concerning the child. A. It has happened on occasion.

Q. At that point you proceed with the hearing? A. We proceed with the hearing.

Q. And what do you see as your authority under those circumstances? A. The authority for the hearing is Section 400 of the Social Services Law which gives to foster parents the right to a hearing.

[21] Q. I see. A. We would generally have no way of knowing until the hearing itself what might have transpired in the interim.

Q. Let us say you do know; do you still feel you have authority to go ahead with the hearing? A. The question, "you"—

Q. "You" as the Assistant Counsel? A. You may have authority to go ahead with the hearing, you may not have authority to be a bona fide remedy for the foster parents. We have no way of knowing, when the foster parents request the hearing, in many cases why they are asking for it, although they are entitled to have a hearing when a child is removed. Foster parents, like everyone else, they do not frame the exact issue that clearly.

Q. I believe you testified that the Commissioner does not have the power to reverse a Family Court decision or a Supreme Court decision. A. Basically, that is correct.

Q. Does that mean that when there is such a decision, the hearing is an exercise, academic exercise? [22] A. The hearing decision, the ones I have seen in the past, where something has happened in the interim, whether it is a placement of some other sort, judicial placement of

Examination Before Trial of Peter Mullany

some other sort, the hearing has resulted in, basically, there being no issue to be decided at that point in time any longer by the fair hearing procedure.

Q. You testified that a number of the fair hearings involved the child being returned to the home; is that correct? A. That is right.

Q. And you also testified that it is not your practice to notify the natural parent? A. That is correct.

• • •

[24] Q. There is no provision in the law, or is there, which gives a hearing officer the power to stay a fair hearing pending, stay a removal of a child from foster care pending a determination of the fair hearing? A. No.

Q. You testified that at times the removal is stayed pending a fair hearing decision, but that is on consent of the agency, isn't it? A. Generally not only on consent of the agency but it is initiated by the agency.

Q. So that if the agency does not wish to stay the removal pending a fair hearing determination, there is nothing that the hearing officer can do about that? A. That is my understanding of the law.

Intervenors' Defendants' Exhibit 2

CURRICULUM VITA

DAVID FANSHEL

Address:

537 Cumberland Avenue
Teaneck, New Jersey 07666
Telephone: (201) 836-9280

Current Employment:

Professor
Columbia University
School of Social Work
622 West 113 Street
New York, New York 10025
Telephone: (212) 280-3250

Personal Data:

Born July 29, 1923, New York, N. Y.
Married, two children
Social Security No. 068-14-1880

Educational Background:

City College of New York, 1947, B.S., Sociology
Columbia University School of Social Work, 1948, M.S.
Social Work

Intervenors' Defendants' Exhibit 2

Columbia University, Department of Sociology, 1948-1955, Completed course requirements for doctoral program (60 credits)

Columbia University School of Social Work, 1960, D.S. W., Social Work Research.

Experience:

1942-1945 Navigator, European Theater, Army Air Force

1945-1948 Part-time experience as group worker in settlement houses, community centers;

Graduate student field placement in New York City Welfare Dept. and Veterans Administration (1 academic year each);

1948-1952 Caseworker, Jewish Child Care Association of New York.

Duties: Worker in residential treatment center and intake department worker in foster care program.

1952-1955 Research Associate, Studies in Gerontology, Cornell University Medical College, New York City.

Duties: Participated in design and execution of large-scale field survey of aged persons in New York City. Subsequently helped design and was administrator of an interdisciplinary counseling service for the aged in East Harlem.

Intervenors' Defendants' Exhibit 2

1955-1958 Research Director, Family and Children's Service, Pittsburgh, Pennsylvania

Duties: Directed studies related to agency practice including investigation of case-workers' perceptions of their clients, Negro couples applying for adoption, families providing foster care for children and couples having marital problems.

1958-1963 Director of Research, Child Welfare League of America, New York, New York.

Duties: In charge of program involving staff of six to eight full or part-time persons. Administrative supervision of research projects and direct work as principal investigator in adoption studies consulted with child welfare agencies in various parts of the country on research problems.

1962-

Present Faculty, Columbia University School of Social Work (Associate Professor, 1962-1965, Professor, 1965-); Director, Child Welfare Research Program (1964-present).

Duties: Time divided between research teaching (courses on research methods in Master's and doctoral program, doctoral dissertation supervision) and directing large-scale program of research on foster care of children in New York City (1964-present).

Intervenors' Defendants' Exhibit 2

Research Projects:

Name	Dates	Source of Support	Selected Publications
1. Studies in Gerontology (Cornell University Medical College)	1952-1955	Russell Sage Foundation	<i>Five Hundred Over Sixty</i> (book)
2. Studies in Agency Practice (Family and Children's Service, Pittsburgh, Pa.)	1955-1958	Heinz Foundation, Pittsburgh, Pa.	<i>A Study in Negro Adoption</i> (monograph); <i>Caseworkers' Perceptions of Their Clients</i> (book)
3. Studies of Foster Parents (Family and Children's Service, Pittsburgh, Pa.)	1957-1960	Field Foundation of Chicago and New York	<i>Foster Parenthood</i> (book)
4. Disturbed Children in Psychiatric Settings (Child Welfare League of America)	1963-1965	American Child Guidance Foundation	<i>Behavioral Characteristics of Children Known to Psychiatric Out-Patient Clinics</i> (monograph)
5. A Follow-Up Study of Adopted Families (Child Welfare League of America)	1962-1966	Mildred E. Bobb Fund of New York	<i>How They Fared in Adoption</i> (book)

Intervenors' Defendants' Exhibit 2

Name	Dates	Source of Support	Selected Publications
6. The Adoption of Indian Children by Caucasian Families (Child Welfare League of America)	1962-1970	Child Welfare Research and Demonstration Grants Program, HEW	<i>Far From the Reservation</i> (book)
7. Study of Advanced Casework Practice (Arthur Lehman Counseling Service, New York City)	1965-present	NIMH	<i>Playback: A Marriage in Jeopardy Examined</i> (book); <i>Therapeutic Discourse</i> (book in preparation)
8. Child Welfare Research Program (Columbia University School of Social Work)	1965-present	Child Welfare Research and Demonstration Grants Program, HEW	<i>Children in Foster Care</i> (book in preparation); <i>Dollars and Sense in the Foster Care of Children</i> (monograph)

SELECTED OTHER PROFESSIONAL ACTIVITIES:

1. Honorary Editor-in-Chief, *Journal of Education for Social Work*, Council on Social Work Education (1966-1972).
2. Chairman, Research Committee, Family Service Association of America (1966-present); member (1958-present).

Intervenors' Defendants' Exhibit 2

3. Member, Research Committee, Child Welfare League of America (1968-present).
4. Chairman, Advisory Board, *Abstracts for Social Workers*, National Association of Social Workers (1965-1969).
5. Chairman, Publications Committee, National Association of Social Workers (1971-present).
6. Chairman, Divisional Committee, National Conference on Social Welfare (1971-1972).
7. Member, Advisory Board, Booz, Allen Public Administrative Services, *Social Services Effectiveness Study* (for HEW) (1971-1972).
8. Member, Interagency Council on Child Welfare, New York City (Committee on Management Information System), (1971-present).
9. Member, Child and Family Development Research Review Committee, Office of Child Development, HEW (1971-present).

PUBLICATIONS

- Fanshel, David; Kutner, Bernard; and Langner, T. "Aging: A Cross-Sectional Survey and Action Program." *Journal of Gerontology*, Vol. 9, No. 2 (April, 1954), pp. 205-209.
- Kutner, Bernard; Fanshel, David; Togo, A.; and Langner, T. *Five Hundred Over Sixty*. New York: Russell Sage Foundation, 1956 (345 pp.).

Intervenors' Defendants' Exhibit 2

- Fanshel, David. *A Study in Negro Adoption*. New York: Child Welfare League of America, 1957 (108 pp.).
- . "A Study of Caseworkers' Perceptions of Their Clients." *Social Casework* (December, 1958), pp. 543-551.
- . *An Overview of One Agency's Casework Operation*. Pittsburgh, Pa.: Family and Children's Service, 1958. (Distributed by Family Service Association of America; 318 pp.)
- Meyer, Henry J.; Borgatta, Edgar F.; and Fanshel, David. "Unwed Mothers' Decisions about Their Babies." *Child Welfare* (February, 1959), pp. 1-6.
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- Fanshel, David. "Toward More Understanding of Foster Parents." DSW dissertation, New York School of Social Work, Columbia University, 1960.
- . "Studying the Role Performance of Foster Parents." *Social Work* (January, 1961), pp. 74-81.
- . "Specializations Within the Foster Parent Role: A Research Report." *Child Welfare* (March-April, 1961), pp. 17-21, 19-23.
- . "Approaches to Measuring Adjustment in Adoptive Parents." *Quantitative Approaches to Parent Selection in Child Welfare*. New York: Child Welfare League of America, 1962, pp. 18-40.

Intervenors' Defendants' Exhibit 2

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; Hylton, Lydia F.; and Borgatta, Edgar F. "A Study of the Behavior Disorders of Children in Residential Treatment Centers." *Journal of Psychological Studies* (1963), pp. 1-23.

. "An Upsurge of Interest in Adoption." *Children* (September-October, 1964), pp. 193-196.

. *Foster Parenthood: A Role Analysis*. Minneapolis, Min.: University of Minnesota Press, 1966 (176 pp.).

. "Child Welfare." *Five Fields of Social Service: Reviews of Research*. Edited by Henry S. Maas. New York: National Association of Social Workers, 1966, pp. 85-143.

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Excerpts from Deposition of David Fanshel

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ORGANIZATION OF FOSTER FAMILIES FOR QUALITY
AND REFORM, *et al.*,

Plaintiffs,

—against—

JAMES DUMPSON, *et al.*,

Defendants,

NAOMI RODRIGUEZ, *et al.*,

Intervenor-Defendants.

DEPOSITION OF DAVID FANSHEL, taken before David M. Horn, a Notary Public of the State of New York, on Tuesday, April 8, 1975, at 9:15 o'clock a.m., pursuant to Notice, held at Columbia School of Social Work, 622 West 113th Street, Room 703, New York, New York.

(3) DAVID FANSHEL, after having been first duly sworn by David M. Horn, a Notary Public of the State of New York, testified as follows:

Examination by Ms. Gans:

• • •

Excerpts from Deposition of David Fanshel

[7] *Voir Dire by Ms. Lowry:*

Q. Dr. Fanshel, the studies to which you have referred, how many have been in New York City? A. The study which I am completing now, the longitudinal study, is exclusively in New York City.

The study of American Indian children involved 20 children from Louise Wise Services, and a certain number from Spence-Chapin Services.

The study of symptoms of children known to out-patient clinics included some children in New York City.

Q. With regard to the longitudinal study of children in foster care in New York, from what sources were you gathering information? A. Very varied. There were three teams initially established, one focusing on the parents, one on the agencies and one on the adjustment of the children. Dr. Jenkins, under separate finding, was studying the parents. Dr. Deborah Shapiro was studying the agencies [8] through telephone interviews with the workers handling the cases. In the first year, her staff had 900 telephone research interviews. Her book is being published this fall by Columbia University Press.

Q. Will you tell us in regard to the work that you yourself did? A. I directed the inquiry into the adjustment of children. And my data comes in various forms.

One, we had psychologists on our staff test the children 90 days after arrival in care, 2½ years later, and at the end of 5 years they were tested whether they were in care or had returned home. And the study focuses on the contrasts between the children remaining in care and those who had returned home, among other issues. They were given standardized psychological tests appropriate to their ages.

Excerpts from Deposition of David Fanshel

In addition, we have reports from school teachers about the adjustment of school age children. We had symptoms described by social workers who knew the children. We also had access to Dr. Shapiro's telephone research data.

We had a child behavior characteristics form filled out by the worker who knew the child. So it's a variety of test material and survey data.

• • •

Ms. Gans:

[15] A. Generally they both emphasize that most children are in care because their parents break down in their ability to function, in their ability to cope. And that may manifest itself in overt mental illness, it may manifest itself in what would be considered deviant behavior, arrests. But the overwhelming thing is the breakdown of parents to function that accounts for children being in foster care.

• • •

[22] Q. Do you have specific findings as to the rate of discharge of children in foster care? A. • • • Yes. 24% of the sample was discharged in the first year, 13% in the second year, about 8% the third year, 9% the fourth year, 7% the fifth year.

• • •

[23] Q. Does your study inquire into the relationship between the discharge of children from foster care and visiting? A. Yes. I refer now to Chapter IV of my book, which is exclusively devoted to visiting, and which will be published as an article in December in the *SOCIAL SERVICE REVIEW*.

Visiting is the best predictive variable in getting a child home. In the first year, if we relate visiting to discharge,

Excerpts from Deposition of David Fanshel

for example, just to give you some information on this question, parents who on the four occasions in which we got visiting information over the years who uniformly were reported as high in their [24] visiting, 86% of their children returned home.

That is, 43% of our entire sample were children whose parents uniformly visited them to the maximum possible; and 86% of these children returned home.

Another 14% of the sample had parents whose visiting went from low to high presumably as they improved in their functioning; and 53% of these children were discharged.

21% of the sample had parents whose visiting declined over time, and 36% of these children were discharged.

22% of the sample were parents who were uniformly low; and 41% of these children were discharged. These included a large group of mothers who could not visit in the first year because they were hospitalized; but when they left the hospital, took their children home.

So among a number of variables that are bound to be critical or significant in predicting whether a child will go home are visiting, behavior, the condition of the mother, and the investment of case work time in the case.

In my study those were the three important predictive variables. But also, ethnicity is a predictive variable.

• • •

[26] The three variables I have been identifying are the quality of the mother, the amount of case work time, and whether visiting took place. • • •

• • •

[29] In the United States, we have an enviable record of having moved from the large congregate institutions

Excerpts from Deposition of David Fanshel

where children used to be housed not too long ago, to the placement of children in individual family homes.

• • •

[30] But that arrangement is based on the notion that a beleaguered parent who is succumbing to whatever forces are operating upon her in preventing her from functioning, can be assured that these services will be rendered on behalf of her children, and will also be assured that her parental rights will be respected. And tremendous emphasis is placed upon the need for respecting parental rights, because it was recognized by the people who helped create this system that if you could not remove the child from the system, if you created a system in which, essentially, you had transferred parents, that this would make the situation unacceptable to the biological parent who was in distress.

• • •

[31] Therefore, the selection of people, and supportive work done by agencies is to help the foster parent understand the distinction between having their own child, or having an adopted child and having an interim responsibility for somebody else's child. And it's not infrequent to find agencies working with the problem of foster parents being inhospitable to the own parent, or feeling that since they offer such superior care, why don't they take full possession of the child?

But that would be basically violating this rather delicate understanding of the agency as negotiated with the foster parent.

• • •

Excerpts from Deposition of David Fanshel

[32] Q. Professor Fanshel, on the basis of your studies and your knowledge of the foster care system what, in your opinion, would be the consequences of giving foster parents, after one year, the right to try to keep foster children in their homes?

• • •

[34] Many of these parents are poor, have limited education, have suffered through horrendous life experiences. And to interpose the foster parents in [35] any action in which the agency seeks to return the child to its own home imposes a burden on that biological parent which makes the system increasingly difficult for the parent to cope with.

Therefore, I see such action as creating confusion as to what are the respective roles. For poor people, it would mean that if you became mentally ill, or break down in your functioning in other ways, and you require the aid of a child welfare agency to provide interim care for your child that, with all the other problems you have to cope with, you have to also struggle with the fear that that foster parent will have replaced you. That will mean, as far as I can see, that poor people who need the service will be loathe to use it for fear of losing their child, and that they will resort to other arrangements less desirable, less subject to the service, the professional service that is required, and increasing the hazard that children will be cared for in makeshift, unsatisfactory living arrangements.

So that I would strongly oppose the giving of this right to foster parents merely on the basis that they have provided care under contract with an agency for a period of a year.

Excerpts from Deposition of David Fanshel

[36] Q. In your opinion, on the basis of your knowledge and experience of the foster care system, and your research, is it desirable, from a social policy point of view, to give foster parents, after one year, the right to plan for the children in their homes?

• • •

A. Foster parents do not have the competence to plan for the child. They do not have access to the full information besetting the child's family, they do not have, by training, the ability to appraise the child's vulnerability. They certainly do not have the ability to objectively appraise their own mode of care and their investment in the child.

The degree to which the placement arrangement is satisfactory for the child must be vested in parties who are not immediately interested in the outcome. It must be vested with parties who have professional competence to assess the situation.

Of course, when children are placed in foster families, there is some understanding that mistakes can happen. We have studies which show that when [37] children tend to accumulate in public group shelters, agencies become less strict in the standards they apply in the selection of foster parents, that they tend to take more risks, because they do not wish the child to continue in a large public shelter. But in taking the risks, they have to be ready on a standby basis if things are not working out as was hoped and anticipated, to remove the child, and place the child in another setting.

The assessment of foster parents is not a science; it requires an appraisal, a judgment. And often, the judgment is made under the stress of children accumulating

Excerpts from Deposition of David Fanshel

in congregate shelters. And certainly, the foster parent, who may develop a neurotic attachment to the child, or who may feel the need to displace the own parent, a fairly common phenomenon in foster care placement, is not in a position to judge whether their attachment is such as to exclude the own parent, or to burden the foster child with a problem in counter-pulls and identification. This has to be assessed by the responsible outside party.

• • •

[38] A. Foster parents have a very delicate and difficult task to perform. They must provide consistent care to children many of whom have suffered trauma in their earlier living experiences.

We ask the impossible of them. We ask them to be loving, devoted people, warm and giving to the children. At the same time, we ask them to do this without getting a return that parents normally get from their children. We ask that they not expect the reward for their administration to the children, in the form of total possession of the child.

So it is a rather delicate thing. And therefore, in interviewing applicants to be foster parents, great care is vested in assessing the underlying motivation, because a successful foster parent is one who facilitates the relationship of the child with its own parent. If that were not true, if the foster parent undermined that relationship even subtly, then that child would be in a situation which should not be inflicted upon him.

It's a very difficult assignment; and many of us who study this phenomenon have extremely high regard for people who are able to carry this out so effectively.

It is quite an astonishing performance that most of them do when they give this service to the community.

Excerpts from Deposition of David Fanshel

[39] Q. Professor Fanshel, on the basis of your study and experience, in your opinion is it possible for foster parents to be nurturing and supportive of a child, even though they understand they are to separate from the child?

• • •

A. Yes, by and large. In my study in Pittsburgh and [described] in the book *Foster Parenthood*, [and in] a replication study in Montreal by Louis Boivin for the Society for Service to Families in Montreal, the same thing was found:

In my study of foster parents, in the longitudinal study, we find that surprisingly, by and large, [foster] parents are able to make the distinction between having an invested attachment to a child as if it were your own, and having a time-limited and contained attachment, which is constricted by the contractual arrangement. Surprisingly, many of them are able to do it.

For many foster parents, it even goes the other way, where the foster parent can only relate to the child in certain age groups. In my study in Pittsburgh we found foster parents who could only take care of infants and very young children; and when they got older, [40] needed to have a new child brought in, and the older child moved on. • • • And of course, there were others who developed specialized capability with older children.

It is an important social phenomenon which we don't fully understand and need more research on, because we know that we tend to recruit foster parents from the lower middle class and the working class; but they seem to be a specialized kind of people. They seem to be more

Excerpts from Deposition of David Fanshel

traditional, they are less prone to have situations in which the woman will seek outside employment • • •

• • •

• • • They are people who are home-centered, allow easy entrance and exit of children from their families, don't make the kind of [41] demands for payoffs that middle class couples make of large extended family systems. • • •

• • •

[42] So we do have—while most do well—that is, the selection procedure—we do have many instances where unwholesome attachments are manifested, where there is lack of stimulation, where there is a severity in the child-rearing, which exacerbates the child's emotional difficulties.

A study by Dr. DeFries and Jenkins, in Westchester, showed foster parents who were having problems in the alleviation of emotional disturbance in children even when the best psychiatric care was given the children. That is, their inability to get related to the children's emotional problems was identified by the psychiatrist as one of a series of problems in placement.

For instance, teenagers were acting out problems with foster families. So that Dr. DeFries and her colleagues wondered whether the child welfare system would not have to move towards small congregate units because of this failure to resolve problems of children in foster family care.

• • •

[46] What I worry about now is that in the absence of a large pool of children available for adoption that

Excerpts from Deposition of David Fanshel

many of the couples who normally would adopt are now looking to foster care as a way of assuaging their pain in not having a child. So I fear that the problem will increase, of the kind of attachment to a child which undermines the rights of the biological parents.

• • •

[47] Do you know whether there's a shortage or surplus of foster parents in New York City, for example? A. Foster parents have always been hard to come by, and it's nearly always been the result of active recruitment campaigns. And that doesn't mean that because people apply you have an adequate pool of applicants.

And so, one of the sources of great concern is a very limited pool of applicants to select from, and the problem that you may be mismatching a child with the wrong foster family because of the limited pool.

• • •

Ms. Lowry: Objection to relevance.

A. Well, you have a child with age, sex and behavioral characteristics. Professionals in the field have recognized that most people cannot be parents to all [48] children. They have certain proclivities. Some children bring out the best in them, some provoke them. • • •

So the problem is to anticipate the kind of child who will bring out the foster parents' best qualities in making the match. But that is an imperfect process. It's based upon appraisal of the child and the family. So that the placement must be viewed as an experiment in living. And it demands that the agency pay close attention as

Excerpts from Deposition of David Fanshel

to what's going on, because if they mismatch, as has occurred, the child will pay the consequences for that.

And we have the problem of foster parents demanding the removal of a child that they find, you know, not satisfactory. And one of the hazards of family care placement is the turnover in care.

• • •

In your opinion, Dr. Fanshel, on this basis, would [49] rules which permit foster parents to prevent the removal of children from their homes be desirable?

• • •

A. I think it would not be desirable, because what that suggests is that the foster parent is in a position to appraise their own involvement with the child. And in those situations which are familiar to family care agencies where the parent needs to use the child for their own psychological purposes, to replace a child who has been lost, for a variety of potentially neurotic reasons, is to ask those people least likely to be objective to appraise the nature of their own involvement. Their intense attachment to the child, despite the negative aspects of the relationship, makes it very difficult to disengage the child when an error in placement has occurred.

Q. Professor Fanshel, biological parents also have neurotic attachments to children sometimes.

In your opinion, are you applying a different standard to foster parents than to biological parents? A. Absolutely. If a child is living with the parents, [50] and they have emotional problems which severely intrude upon them, one attempts to get help for them. But the basic commitment to the biological relationship means that one

Excerpts from Deposition of David Fanshel

anticipates the integrity of the family is ongoing, and not to be disturbed. But if it is through an agency of the State or its surrogate, through a volunteer agency, that is a situation that must be corrected. And there is not the danger of breaking a traditional tie, a family tie; and so, there is a very different set of circumstances as between a foster child in a foster home and a child in his own home.

. . .

Q. Professor Fanshel, your longitudinal study focuses on children in foster care? [51] A. Yes.

Q. And you have already described to some extent the research methods.

Could you explain in greater detail the way in which you studied the children in foster care?

. . .

A. In our study, for example, in field interviews with the parents, we got developmental histories of the children, and created three indexes of their previous history before entering care, to include that in the equation in trying to determine why he looks the way he does five years later.

So we take into account the early life history, we take into account the length of time children spent in care, the number of turnovers they have experienced, whether they have been visited, whether they have gotten casework help, in quantity or not. We have taken into [52] account qualities of foster parents.

I remember, in designing the foster parent appraisal form, using inputs in Montreal for the New York study.

• • •

. . .

Excerpts from Deposition of David Fanshel

Q. Could you describe the kinds of ways in which you tested and measured how the children in your study fared in foster care? A. Yes. Well, the psychologists visited the children wherever they were placed.

We had three psychologists hired by our project. I tested them, as I believe I indicated, at 90 days, at 2½ years and at 5 years.

In addition to the intelligence testing, we gave the children a projective test, a figure-drawing test and a Michigan picture test.

[53] We also had the caseworker rate the child on behavioral characteristics on 117 items on a form developed with Dr. Borgatta, the University of Wisconsin, and now at Queens College.

We had teacher ratings on their school report form.

. . .

[54] Q. Professor Fanshel, in your work with foster care adoption in general, and in connection with this particular study, are you familiar with the psychiatric literature that has been developed on the effects of separation on children? A. It's not just the psychiatric literature. [exclusively.] It's an interdisciplinary area [containing a] literature which covers psychiatry, child development; it even covers animal studies.

In other words, this is a literature which many people have contributed to. And I'm acquainted with the psychiatric portion of it and I'm also acquainted with the other studies.

Q. Professor Fanshel, I show you these affidavits, which have been marked for identification, and ask you whether you have had occasion to read them (handing)?

Excerpts from Deposition of David Fanshel

Ms. Lowry: Before you go on, would you please identify the affidavits by the affiants and by the dates that the affidavits were executed?

Ms. Gans: Affidavits of Professor Joseph Goldstein and Albert Solnit, dated October 10, 1974.

Maybe I will limit it to this one, and just say A.

(Ms. Gans hands document to the witness.)

Q. Professor Fanshel, what is your opinion of the contents of the affidavit?

• • •

[56] A. Well, these are eminent psychiatrists and have distinguished professional histories. And I have no question on this level, that they are competent in their professional work.

It is only in terms of phenomena which must be produced by professional scholarship, that I deem it appropriate to comment, to make comment about.

There is an uneven history in psychiatry in terms of its fascination with the problem of separation, and its research productivity. The reason for the fascination with separation is that it is a linchpin in the basic psychoanalytic theory, • • •

But the history of this performance, in which I would place the work of people who have provided these affidavits, in that intellectual context is, as I have indicated, an uneven history in terms of the [57] rigorous necessity of the research.

• • •

(58) There is a school of thought which indicates that children can develop multiple forms of relationships with

Excerpts from Deposition of David Fanshel

adults, that they are sturdier and hardier than the proponents of the deprivation theses and those concerned with separation problems would indicate.

My major criticism of the pronouncements of the psychiatrist referred to is that these are based upon [59] selected cases from their own clinical caseloads. And the representativeness of these cases in terms of the larger phenomenon of maternal separation has not been demonstrated. There is no approach to measurement of the phenomena in a systematic way so that what I would consider analysis, data analysis, could take place. There is no quantification of their data in any form that a reputable researcher would respect. And therefore, one has to say that this is a very specialized view of the separation phenomenon.

• • •

Q. What were your findings, Professor Fanshel [60] concerning how children in foster care fared over the five-year period? A. I base this view on my follow-up study in adoption, my studies of American Indian children placed in 15 states, and a recent effort to test out—a computerization effort to gather data on child adjustment for the New Information System in New York, and on my longitudinal study.

And I basically have the view that, by and large, these children are highly durable, that they, amazingly, take all kinds of social insult and incorrect modes of handling, and come up their own feet. That is, the burden of the literature indicates a greater stamina, a greater ability to withstand trauma, than would [be claimed by] proponents of the “best interests of the child” school, who they portray the children as so vulnerable that after a year in one setting, if they move to another, they see the hazard

Excerpts from Deposition of David Fanshel

of a pathogenic process taking place which is so overwhelming a hazard, that one should [accommodate to] approve even the earlier transient relationship.

• • •

[61] A. • • • How They Fared in Adoption, a Follow-up Study, • • • was published by Columbia University Press in 1971—1970. In it, we find that the number of placements experienced by children prior to their adoption—and these were adoptions that were followed up to adulthood, with interviews with their parents—our data revealed that the number of different temporary placements experienced by the adoptees prior to their adoption seemed to bear very little relationship to their subsequent life adjustment.

• • •

I do not find this in the longitudinal study, that the number of placements correlates with negative outcomes in terms of the child's adjustment.

• • •

Q. Professor Fanshel, could you describe in detail your study, How They Fared in Adoption, giving the size of the sample and the various controls and the research methods you used? [62] A. I don't portray it as the world's gift to research. I have a modest perspective about it. It's more systematic than other people have done, but I do not portray it as resolving questions.

• • •

Excerpts from Deposition of David Fanshel

[68] A. Well, 42% of the samples had experienced only one placement. 30%, 2; 18%, 3; and 10%, 4 or more.

• • • [T]he number of placements was not correlated with the adjustment of the children, as one would anticipate from professional theory.

• • •

• • • I would say that I would advise continuity of care if all things are going well; and I would assume that agencies would take into account a child's attachment and his dependency on [69] others. I do take the position that if something seems to be going wrong in placement from the agency's perspective, that the weight of evidence is in support of the notion that there will be deleterious consequences. . . . [i]f the child has been visited by his parents, he's able to maintain dual relationships often.

So that the separation from the foster parents is not a separation from all of the important contacts he has had. It may be the restoration of the primary contact. And in this sense it's a tradeoff. He's gaining a lot from the restoration of primary contact. He may have an instantaneous reaction to the separation from what he's gotten accustomed to.

Q. What do you mean by "primary contact"? A. Well, we assume that relationships are ordered in this world, that every mamma and papa is first in your life. It's remarkable in the light of the people who have never seen their parents who have searched for them. And there's been this whole phenomenon in the adoption field of the quest of grownup people for their forebearers. So that I see as a primary [70] relationship the biological tie.

• • • I don't take the view that the primary relationship

Excerpts from Deposition of David Fanshel

has been improved if there has been total failure of the child-caring personnel. I do take the view though, all things being equal, that the relationship is the most significant one potentially, and it is the obligation of agencies to support that relationship. * * *

Q. In your experience, Professor Fanshel, did you find that agencies moved children lightly? A. No. As a matter of fact, to be critical of the agencies, it is that we would be more often likely to allow a child to remain in a situation, because under the pressure of high caseloads, the pressure of inadequate supply of foster homes, it's simply easier to let Johnny stay there than to find a new home and to go through the whole hassle of replacement. * * *

* * *

[71] I have seen appraisals of foster parents. And in the work of Martin Wolins in his book *SELECTING FOSTER PARENTS*, which is the name of the book, that view comes out, that under pressures there's a stretching of agency standards into accommodation with situations which under other circumstances would not be accommodated to.

So that I have the view that a more rigorous monitoring of this system would not permit children to stay where they are in many circumstances.

* * *

[74] Q. On the basis of your studies, experience and knowledge of the field, would you say that the fact that a child has been in foster care for a year alone is a meaningful criterion for determining the attachments which the child may develop?

Excerpts from Deposition of David Fanshel

Ms. Lowry: Objection as to form.

A. I find it's a rather arbitrary time figure. * * *

* * *

[75] Q. To your knowledge, Professor Fanshel, are there any standards for social work decisions?

* * *

A. There are general principles of work. For example, in this field, the Child Welfare League of America has promulgated a document called *Standards For Foster Care Service*, which is based upon very hard work by League professionals meeting regularly to conceptualize the bases for service to children in foster care. This has recently been revised; and it is up-dated regularly. This is similar to the kind of standards that the American Pediatrics Association and others maintain for their work. So that if one examined this documentation, one would find major orientations to this work.

There is also a licensing function exercised by the State and by the City so that professional staff come into agencies, read records, appraise what is going on in individual case situations. The agencies are required to report to the City agency and the State agency on what their plans are for the child, and so (76) forth.

So that my answer is that this is an area which is governed by professional concepts. To not have these would be anarchy, you know. Not to have set forth what are the principals of work in this field would create an intolerable situation, with 300,000 children in foster care.

* * *

Excerpts from Deposition of David Fanshel

[78] *By Mr. Kantor:*

Q. Dr. Fanshel, in your longitudinal study, did you have occasion to look at not the reasons why, but the source through which the child was originally placed in foster care?

• * •

[79] A. Four out of five placements in our study are voluntary placements.

Q. 80%? A. Yes.

Q. And the remaining 20% came through the Family Court? A. Yes.

• * •

[80] A. Length of time in care was one of my most important analytic variables. And in my study of adjustment, I did not find what one would expect to find, that is, that length of time in care would be predictive of some breaking down process, predictive of loss in IQ, or predictive of increased emotional disturbance.

Q. Those were things you did not find? A. I did not find that. But when I differentiated by ethnicity, for example, on IQ changes, I found that Puerto Rican children showed an increase in their IQ related to being in care for the first 2½ years, and then it's stable.

The black children showed an enhanced IQ over a 5 year period.

The white children showed a decline in IQ associated with being in care.

• * •

[82] Q. I quote: "Of the 229 subjects still in care at the end of five years, 16 had experienced one discharge

Excerpts from Deposition of David Fanshel

and reentry, and 5 had gone through this experience on two occasions," So that's 16.

"Of the 367 who had left care, with 29 adopted children excluded, 33 had experienced 2 discharges and 1 reentry.

"6 had experienced 3 discharges and 2 reentries. And 2 had experienced 4 discharges and 3 reentries."

The total number of children who came in and out of care is about 10%, 62 cases.

• * •

[83] Q. I did record, and got from the worker, changes in circumstances which led to the exit of the children out of care.

For instance, 17% of the families where the child was discharged had moved to better housing, and 24.7% had moved without the condition being determined.

13%* had a change of family finances, with 13% accepted for public assistance, and 15% being self-maintaining.

31% of the families had an improvement in the natural parents' health, and an improvement in home status.

17% had a change in the presence of the parent, [84] that is, a parent had come home.

I had the agencies tell me whether they approved of the child coming home. And 47% approved strongly, 20% moderately approved, 16.5% had a mixed or neutral reaction. 7% moderately approved** 17% strongly opposed. So that by and large the agencies were in favor of the child going home.

• * •

* Sic. Probably should be 28%.

** Sic. Probably should be "opposed."

Excerpts from Deposition of David Fanshel

[86] 17% of the children who returned home came home because the mother recovered from mental illness. 12% of the parents had desired a time limited placement in order to work out their personal plans, such as to get job training or treatment.

Another 9%, a relative offered suitable plan for the care of the child.

Another 9%, the mother recovered from physical illness. • • •

[89] Can you tell me, Doctor, why you feel, then, that moves should be made carefully, and should be thought out carefully?

• • •

A. I worked, myself, as a worker in foster care as I started my professional career, so I know foster children, I know the pains that these children experience in moving. That is a very human situation, and one of which those who work with children are acutely aware.

It's with great regret that you uproot a child except on that usually glorious occasion when he goes to his own parents; and that is usually a time of rejoicing, that the family is reunited.

On the basis of our interviews with children at 2½ years, and I read—these were tape recorded interviews with foster children, in which I duplicated Weinstein's work at the Chicago Child Care Society, published in the book, *THE SELF IMAGE OF THE FOSTER (90) CHILD*—I read all of the transcript of these interviews with the children. And it came through in overwhelming good measure that the children had positive emotional attachments to their own parents, that their original parents have meaning for them. • • • what came through for me on the basis of reading all of these interviews was the meaning of one's own family to a child.

Excerpts from Deposition of David Fanshel

[91] What I object to in the depositions of the psychiatrists is the cavalier disregard of the value of one's biological tie. By "depositions of the psychiatrists", I mean the ones referred to by Mrs. Gans, and which were introduced into exhibit here.

• • •

[92] Q. Can you tell me, Doctor, in what respects, if any, you disagree with the theses propounded by Drs. Goldstein, Freud and Solnit?

• • •

[93] A. I don't pose as an authority on the book, because I would have to reread it. But what comes through to me as an error in the point of view taken is that they summarily and invariably would place a premium on the continuity of care, raising it to a legal problem or a program policy in this field, on the basis of selected clinical case experience that they had, and they want to generalize from the clinical cases that have been observed to the phenomena of foster care, which include many situations, types of situations, which they had not observed, and about which they provide no data.

So that it does seem to me that this provides an inadequate social foundation to develop social policy and program or orientation.

• • •

[94] A. I would characterize it as deductive thinking from general principles arrived at on the basis of other scholarship, working back to the problems of the child deductively from the general principles, without any reference to sampling, representativeness of cases, to the general

Excerpts from Deposition of David Fanshel

population of children in foster care. I find the reasoning quite specious.

• • •

[99] *Examination Ms. Lowry:*

Q. Professor Fanshel, I would like to ask you some questions about the longitudinal study to which you testified.

Can you tell me when the study was begun? A. It was begun in 1966, the first child becoming eligible for the study on New Year's Day, 1966; and we built up our sample through the period January 1 through August 31, 1966.

Q. How were the children selected for the study? A. They were elected by criteria which prescribed that they would have been in care at least 90 days; that they had never been in care before that; their siblings had never been in care before that; they were between the ages of infancy to 12 years and that they were charges to the New York City Charitable [100] Institution's [sic] budget.

• • •

[113] Ms. Lowry: I am going to quote from the table entitled, "The Exit of Children from Foster Care: An Interim Research Report" by David Fanshel, published in *CHILD WELFARE*, February, 1971.

Q. I ask you whether you said in that report in part—and it is quoting from page 67: "It is noteworthy . . . that we find children leaving care in the greatest volume during the earlier phase of placement, and this volume tapering off markedly over time."

That is your statement, is it not? A. Yes. I mean you are reading correctly.

Excerpts from Deposition of David Fanshel

Q. Considering the fact that you were studying this kind of phenomena, can I ask you why you limited your study to children who had been in care over 90 days when in fact there were children who entered and left the system during the 90-day period? Isn't it true that the discharge would have dropped even more drastically or sharply if you included the children who entered and left during the first 90 days?

• • •

[114] A. May I first explain that these data are updated and in final form in Chapter V of my manuscript, and I believe I gave you a copy of Chapter V.

• • • [I]t is true that in the first year one in four children were discharged in that time period but even at five years; seven percent of the sample [115] left care. So my perspective between the publication date of that article and my final manuscript has changed. The perspective that children continue to be discharged as far as the fifth year of care, my interpretation of that data is that the agency can still work on the problem of discharge with anticipation of some degree of success in getting children home.

Now as to the reason that we excluded children who were in care for less than 90 days, that part of our study was focused on the long-term effect of the separation from one parent in terms of personal and social adjustments. We made the decision if we continue to engage in an expansive study of this kind, we wanted at least 90 days of care and separation as indicating a substantial amount of separation from one's parent. Our study was not to include children who use foster care on short-term basis. We didn't anticipate there would be that much effect on them.

• • •

Excerpts from Deposition of David Fanshel

[118] Q. It is a fact, is it not, that it is a [119] life-time system for many of the children?

• • •

Q. In fact, didn't your study indicate that at the end of five years, 39 percent of the children that you studied were still in foster care? A. Yes. Some of them were in institutions but some were in foster families.

Q. In generic foster care? A. Yes. • • •

• • •

[136] Q. Do you have an opinion as to whether the competence of the agency worker varies from agency to [137] agency? A. I have an opinion that it does vary.

• • •

[141] Q. Do you have any psychiatric training, Professor Fanshel? A. No.

[142] Q. Not all psychiatric theory is based on quantitative analysis, is it? A. No.

• • •

[143] Q. Professor Fanshel, are you familiar with the decision making process within individual agencies with regard to a plan for a child?

• • •

[144] Q. Are you familiar specifically with how that process takes place? A. I think it varies by agency.

• • •

Excerpts from Deposition of David Fanshel

Would it be your testimony that part of the impossible which the agencies ask of the foster parents would be to accept the agency decision no matter what?

• • •

[145] A. I was using that as a figure of speech indicating, if you will, pressures of a difficult assignment that foster parents were faced with. • • • A foster parent who interferes with the process of a child returning home is engaging in behavior which is problematic on various grounds.

One, it creates great difficulty for the child in finding his way with his own family. We must always keep in our mind that the children who remain in the foster care are encumbering a financial responsibility upon the community that is enormous. • • •

So it is of extreme importance that children be able to leave the system as soon as it is desirable and that foster parents facilitate that departure of the child for the child's own interest and also because the community has an interest that that child not use the expensive service unless no other recourse is [146] available.

Q. What about with regard to the foster parents of 39 percent of children in your study who had not left the foster care system after five years? A. Well, I would hope though, for example, the two years review under the 392 proceedings would result in proper adjudication of those situations. If it seems that the parents have dropped out of the picture that then actions be taken if the foster parent desires to adopt the child and that in those hearings those issues be brought out and adjudicated properly.

• • •

Excerpts from Deposition of David Fanshel

A. My understanding is that this case was restricted to an issue of what to do if a child had been in the home [147] for the year. In my study of children, some of them had been in foster homes for up to five years; and from a social policy perspective, it seems to me that children in long-term foster care are entitled to some resolution of their indeterminate status from a social policy perspective, if their parents have absolutely failed their child despite agency efforts to involve them, and I would indicate it is important to indicate that the agencies have helped the natural parents as a first condition, given that, if the agencies have attempted and the parents have not responded, from the social policy perspective, I would think that an alternate plan be arranged for the child so he is not in limbo. I am very much for foster parents who have had children for many years and wanted them for their own adoptive child, to facilitate that process.

• • •

[155] Q. At the time of the two-year review, you are in favor of foster parents objecting to proposed removal of a child from a foster home? A. Yes. In the context of an overall review of the Court, the parents must consider that the Court is reviewing the child's overall status and the foster parents' input as part of the overall information available to the Court.

Q. You are against the foster parents objecting to the removal of a child from a foster home; is that correct? A. Yes. That objection interposes a procedure which can result in a child remaining in care for a sustained period of time; can interfere with the child's movement [156] when that movement may be very necessary.

• • •

Excerpts from Deposition of David Fanshel

[159] *By Ms. Gans:*

Q. Professor Fanshel, are you opposed to foster parents adopting a child that is free for adoption? A. No. As a matter of fact if the natural parents have essentially abandoned the child and the child has developed a loving relationship with the foster parents, I would do everything to encourage such adoptions.

I do have one problem about the question of adoption, vis-a-vis foster parents, and that's from a social policy perspective, there is in my view a disposition in organized foster parents' groups to be unsympathetic to the problem of the natural parents and to promote the interests of the foster parents at the expense of the natural parents. I find a lack of compassion in their [160] organized efforts with respect to the problems of natural parents; and that gives me pause.

• • •

[170] *By Mr. Kantor:*

Do you oppose the participation of foster parents in the decision to remove children from foster care? A. I believe the principal person in that process is the parent and the parent's readiness to take the child home is central to the relocation of the child's home.

[171] I would be opposed to having the foster parent being treated as a co-equal partner to procedures and I think it is the responsibility of this social service system to meet the needs of the child and his parents. However, if the foster parent has information about the conduct of the parents and the effect of the parent's conduct upon the child, I have no objection to the foster parents sharing that information with the agency worker so that can be considered.

Excerpts from Deposition of David Fanshel

I think that is different than having the foster parents come into play at a hearing as to the suitability of the child going home.

• • •

[179] A. I think being a parent involves a civil right; that is, a parent has a right to plan the future of his or her own child; to interfere with that right is to interfere with a basic responsibility.

By Ms. Lowry:

Q. Do you think the parent or the child— A. I consider them both a part of the equation, and I don't see a child's interest disassociated from his parents' interest.

• • •

Excerpts from Deposition of David Fanshel

TABLE 9

INTER-AGENCY TRANSFERS, INTRA-AGENCY TRANSFERS, REENTRIES INTO CARE OF DISCHARGED
CHILDREN AND TOTAL NUMBER OF PLACEMENTS EXPERIENCED BY STUDY SUBJECTS OVER
FIVE YEAR PERIOD

Number of Placement Moves	Inter-Agency Transfers		Intra-Agency Transfers		Reentries of Discharged Children		Total Placements ^a	
	No.	%	No.	%	No.	%	No.	%
Zero	377	60.4	467	74.7	562	90.1	NOT APPLI- CABLE	
One	191	30.6	101	16.2	49	7.9	261	41.8
Two	50	8.0	44	7.1	11	1.8	186	29.8
Three	5	0.8	11	1.8	2	0.3	115	18.4
Four or more	1	0.2	1	0.2	—	—	62	10.0
TOTAL	624	100.0	624	100.0	624	100.0	624	100.0

^a Reflects the sum of inter- and intra-agency transfers and reentries into care after discharge.

Excerpts from Deposition of David Fanshel

TABLE 10
NUMBER OF PLACEMENTS EXPERIENCED BY STUDY SUBJECTS BY YEAR OF LAST DISCHARGE FROM
FOSTER CARE^a
(N=577)

Number of Placements	YEAR OF LAST DISCHARGE					Still in Care Five Years After Entry
	Discharged First Year	Discharged Second Year	Discharged Third Year	Discharged Fourth Year	Discharged Fifth Year	
	(percentages)					
One	79.5	56.7	38.6	45.1	25.0	15.9
Two	18.4	24.3	36.4	19.6	32.5	38.3
Three	2.1	17.6	22.7	15.7	22.5	28.6
Four or more	—	1.4	2.3	19.6	20.0	17.2
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0
NUMBER OF CASES	141	74	44	51	40	227
Mean Number of Placement	1.23	1.64	1.89	2.10	2.38	2.47
Standard Deviation	0.47	0.82	0.84	1.19	1.08	0.96

^a X²—182.059, df = 15, p < .001; F—Test (differences of column means)—39.818, p < .001.

^a Twenty-nine adopted children and 18 children transferred to state institutions not included in this analysis.

Excerpts from Deposition of Joseph Goldstein

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. 74 Civ 2010 RLC

ORGANIZATION OF FOSTER FAMILIES FOR
EQUALITY & REFORM, et al,

Plaintiffs,

vs.

JAMES DUMPSON, et al,

Defendants.

The deposition of Joseph Goldstein, taken at the Child Study Center, 230 South Frontage Road, New Haven, Connecticut, on Tuesday, April 1, 1975, commencing at 5:15 o'clock p.m., pursuant to the Federal Rules of Civil Procedure, before Robert W. Merchant, a Notary Public in and for the State of Connecticut.

• • •

[3] JOSEPH GOLDSTEIN, being first duly sworn by the Notary Public, was examined, and testified as follows:

Direct Examination by Miss Lowry:

Q. Dr. Goldstein, would you state your educational background after college, please? A. After college I received

Excerpts from Deposition of Joseph Goldstein

a Doctorate in Political Science from the London School of Economics; Law Degree from the Yale Law School; and I am a graduate of the Western New England Psychoanalytic Institute.

Q. Can you tell us what experiences you have had with regard to working with children, any research or treatment? [4] A. I have not treated children. My primary experience is through the literature and through a very extensive contact with Dr. Anna Freud, and study at the Hempstead Clinic in London, for three months, and continuous exchanges with her and also the Child Study Center here in New Haven.

Q. I show you a copy of a book entitled, *Beyond the Best Interests of the Child*. Are you familiar with this book? A. Yes, I am.

Q. Are you one of the authors? A. I am one of the authors of the book.

• • •

A. They are based substantially, though not certainly exclusively, I would say first on common sense, second [5] psychoanalytic theory and three, a clinical experience that is reflected in a large body of literature and the experiences of my two co-authors, actual experience of theirs, Anna Freud and Dr. Solnit.

• • •

[8] Q. Based on your training, do you have an opinion on how the existence of blood ties affects the development of emotional bond between the parents and the child and the child and the parents?

• • •

Excerpts from Deposition of Joseph Goldstein

A. On the basis of reading a number of cases which concern themselves with the development of emotional ties, it is my understanding and belief that there is an enormous investment on the part of the biological parent in the children and the best opportunity to develop emotional ties is when that investment continues from the moment of conception through birth, through the entire development of the child to adulthood, and so on. In that sense, a blood tie is very significant, but it is not critical in the event that, once the child has left the chemical exchange for the social exchange, once that child is part of this world, it is this relationship that develops with the caretaking adult over a [9] continuous period with the child, that person may or may not be the biological parent. Ideally it is.

Q. Based on your training, do you have an opinion as to whether it is possible for there to be an absence of significant emotional development between natural parents and the child—

• • •

A. I would say this: that psychological ties between biological parent and child in both directions need not develop or can be shattered by substantial interruptions of time, for separation and the length of time that is required for the breaking of those ties depends very much on the developmental stage that the child is at, at the time of separation.

By Miss Lowry:

Q. You just used the term, I believe, "psychological parents." What do you mean? A. By psychological parent we mean that adult or those adults to whom a child

Excerpts from Deposition of Joseph Goldstein

growing from infancy to adulthood can turn to and has an emotional investment in, and in whom the adults have an emotional investment. It's a two-way thing, a mutual thing, in which there are psychological bonds between the [10] adult and the child which gives the child a sense of continuity about the real world, a sense of belonging, a sense of knowing where he or she will be the next day, to whom that child can turn in times of trouble, in times of joy, for responses that recognize that child as an individual growing into a person in its own right.

Q. Based on your training and your familiarity with the literature with which you are familiar and your experiences at the Hempstead Clinic, do you have an opinion on what effect it would have on a child to remove him from a situation in which he has formed psychological ties with the adults? A. It depends on under what circumstances the child is removed, and for how long, but certainly if the removal is at the request of some outside force and against the wishes of the custodial parent or the psychological parent, in the instance you are talking about, it can have a very devastating effect. It can undercut the sense of authority that an adult has in the life of that person, and in turn, undercut the kind of trust the person has in himself or herself and in an adult world with whom it has to deal.

• • •

[11] Q. Based on your experience and training, would you consider it less detrimental to the child to review the decision prior to the child's removal from a situation in which he has formed psychological ties or subsequent to his removal? A. I have no question that when a child's custody is in dispute, that unless the child is in extreme

Excerpts from Deposition of Joseph Goldstein

danger or subject to gross neglect, the child ought to remain with the current custodian until the final disposition can be made, and that goes for biological parents who are psychological parents at the time, and it goes for returning a child after a very extended period with foster parents back to their biological parents.

• • •

[14] Q. Now, you were talking about a period of temporary foster care during which ties could hopefully be maintained with the parent from whom the child was taken, and then a period after this during which the child formed new psychological ties.

Can you define for us in any way the initial period, the period that you described as being a temporary period, in terms of the actual passage of time? A. Ideally, the temporary period would be a time set by the Court, for example, at the time that the child is placed in foster care and beyond which time foster care cannot continue with the expectation that the child will be restored to the parent from whom it is separated, with the expectation that enormous effort will be made to keep alive the ties between the child and the absent parent, • • •

• • •

[15] A. • • • that for a child, say, from one year or from early infancy until maybe two or three years, the maximum time for separation without maintaining contact with the absent parent might be two, three, four months.

For a child over that it might be six months. For a [16] child six to ten or twelve, and Dr. Solnit may be able to give greater specificity beyond that time, it could be longer.

Excerpts from Deposition of Joseph Goldstein

What I am suggesting in the paper is that even for the oldest children it never be longer than eighteen months and the presumption would be for a period after eighteen months that the ties with the prior or the biological parents or the absent parents have sufficiently broken, and that one looks to maintaining the new relationships that have developed. Any period like four or five years, no matter the age of the child, it is well beyond any period in which one could conceive of maintaining those ties sufficiently to justify intervention and changing that relationship prior to resolving the legal issues that might be involved in the shift.

Q. Would your conclusion in regard to this be different if the absent parent visited from time to time? A. Certainly one can help keep those ties alive if there is an opportunity for visiting and one would encourage in real foster care which we would call temporary care the opportunity for the child to visit with the absent parent and for the parent to visit with the child.

• • •

[17] * * * A. So the answer is to the extent that one can maintain these relationships one increases the chances of being able to restore the child to the absent parent.

• • •

Q. Based on your professional training, do you have any opinion on the effect on children of keeping them in so-called [18] neutral foster homes and do you know what I mean—do you understand that question? A. I've seen the phrase neutral foster home and it is discussed from time to time in a number of cases including those concerned with the Jewish child welfare cases of a number of years ago.

Excerpts from Deposition of Joseph Goldstein

I understand it is an effort on the part of the foster parents to somehow project themselves as aunt and uncle or some equivalent to that for the child in order to prevent the child from developing strong ties to the foster parents and in order to protect the relationship with the absent parents.

And my understanding is that it is time and the absence of the parents that breaks the relationship between the child and the absent parent, not the attitude of the foster parents.

• • •

[23] Q. Doctor, would you say that psychoanalysis is exact in the sense that a science like physics is exact? A. No, psychoanalysis is an art.

• • •

[24] Q. You define a psychological parent as one who, on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs for a parent, as well as the child's physical needs. A. Yes.

Q. Now, is that a concept, Doctor, which is readily determined on a generalized basis?

Miss Lowry: Objection as to form.

By Mr. Kantor:

Q. Answer the question, Doctor. A. Yes, I think that there is a way of describing this from an outside vantage point, that which we as observers can determine, and in determining these characteristics of a relationship, can then posit that there is a presumption that psychological

Excerpts from Deposition of Joseph Goldstein

ties have developed and therefore the adult is a psychological parent.

Q. Can you tell me what indicia a judge, if you will, will [25] look at in determining whether or not a psychological parent-child relationship has developed in a particular case? A. I would think primarily the period of time and the uninterrupted quality of the relationship over that period between the adult and the child would be critical to that determination.

Q. Would there be other factors that would be taken into account? A. Oh, certainly. There would be a number of other factors, particularly whether or not the adult is perceived by the child as the parent or person primarily responsible for authority-making decisions, who comes to a period to be almost omniscient and all-powerful, yes.

Q. Would that be a determination that a lawyer or judge could make as adversary? A. I think there is no question about it.

Q. Is that yes or no? A. Yes, clearly can.

Q. And that a judge would be able to make a decision rather than someone trained in social work or social psychology? A. Probably from a variety of indicia that wouldn't even require such training except in a very unusual case. If, for example, someone described to the judge that a child has been [26] living in a family with one or two adults and some siblings or some youngsters for a period of time, say, for a child of three years, and for the last four years of that child's life, it goes back after school to a home to those parents, the ones that call the doctor and the like, the judge can with relative certainty decide, well, those are the psychological parents.

He may decide they are not good and that is another question, but those are the psychological parents.

• • •

Excerpts from Deposition of Joseph Goldstein

[27] Q. All right. Can you tell me what indicia would be used to determine when a pre-existing child psychological child-parent relationship had broken down or was no longer viable?

• • •

[28] A. One would call in as an advisor or some expert on children, a child analyst, child psychologist, whatever you will, who would examine the child, examine the adult parties involved, and give you a date on which these generalizations are based with regard to that particular child and would tell you the extent to which the ties with the absent adults are still alive, to the extent to which the child has felt abandoned by those adults, and the extent to which new ties have developed, • • •

• • •

Q. Doctor, are you familiar with, for lack of a better word, the phenomenon of adopted children, years after the adoption, seeking out their biological parents? A. Oh, yes.

[29] Q. Does this cast doubt on your concept in your own mind of the psychological parents—I'm sorry—the biological parent-child, psychological parent-child relationship breaking down after a comparatively short time, six months, eight months, ten months, eighteen months? A. No, I don't think it is evidence of that. I think it is evidence in each child of a strong interest in its origin and how it began, and whatever mystery is about their origins that are left unsolved or unanswered, there is interest in some children now adults a great need to find out about one's heritage and that, of course, is true with regard to family trees for persons who aren't adopted.

Excerpts from Deposition of Joseph Goldstein

That is part of being a human being, wanting to know about who we are and where we came from. It doesn't in any way undercut the on-going, day-to-day needs of a child for affection and stimulation from a caring adult.

Q. Doctor, you stated that the child's sense of time controls what essentially is temporary for adults, a sense of time, and you have said periods based on numbers of the age of the child, the child, under three years being two to three, four months, and a child up to about approximately six, being something like six months, and a child six to ten years, possibly longer, and but never longer than eighteen months. [30] A. Right. And I also said that figures are always, the time period must by definition be arbitrary, but I am willing to say that beyond eighteen months for any child, the presumption must be that the ties with the absent parent have been substantially damaged.

Q. Are you familiar, Doctor, with a study by Eugene Weinstein in 1965, published as, "Self-Image of the Foster Child and Parent"? A. No, I am not familiar with that.

Q. Did you perform any statistical analyses to reach the conclusions of your two, eight, ten, eighteen months? A. No.

Q. What were the figures based upon? A. They are based upon the experience, the clinical experience, that I draw on from my colleagues and the literature and the Robertson piece which I alluded to earlier, . . .

. . .

Q. The clinical experiences of the Robertson report, what population was that drawn upon?

[31] Dr. Solnit: Four.

Excerpts from Deposition of Joseph Goldstein

A. (Continuing) —three or four children whom they took into their custody at different times and in the spirit of science to which we have such allegiance, they kept a detailed account both orally and by film of the nature of that experience and the meaning of that separation for the four children involved, and tried to take into account and did study the significance of lapse of time as far as—

By Mr. Kantor:

Q. On those three or four children? A. Yes, right; right.

Q. Now, the Freud study, I take it that was separation during the Second World War? A. Yes.

. . .

Q. Do you know of any—withdrawn.

The clinical experiences that you base your conclusions upon, go ahead, Doctor. A. What I was going to say is the clinical experience [32] often involves reliance on material about children who are in trouble, who have been deprived. We as adults and parents and members of families, just as human beings who live in this world have a very substantial sense of what it means to be a child, and what it means to be a part and not how necessary it is for the child to have a parent be in contact with the child and to meet the child's need and to be responsive to it, and that is all that the continuity guideline is about, it is protecting the family relationship.

That is why the continuity guideline is so much in favor of minimum intrusion on family relationships by the State, in order to prevent interruptions of continuity. The real problem becomes in recognizing who the family is at any

Excerpts from Deposition of Joseph Goldstein

given point in time for the child, and very often the child may be if the child is placed in a setting other than the setting which is the constellation of the biological parent, it may be the real sibling and that is what we are talking about.

• • •

[36] Q. Child in foster care for four or five years, is discharged pending a final determination and the final determination is affirmed. A. Yes. •

Q. Can you tell me, then, Doctor, what harm, if any, would accrue to the child during the interim period to remain in the foster parent home? A. I think little harm, if any. In fact, to the extent that orderly process is the experience the child has with the outside world, the chances of transitional shift, because there will be need for a gradual transition to the new home, it can't be done abruptly if the new relationship is to develop securely. The child will be better prepared if it is done after a careful deliberation by society rather than an intrusion because that intrusion, no matter how you try to explain it to the child, is abrupt, is authoritative, dictatorial, in a way that will make the child's new relationship start out in a suspect way, wondering, can I now be removed from this other setting, no matter what the determination is. We are talking about an orderly process [37] for society determining the child ought to be returned to the natural parents after such a long stay.

• • •

[38] Q. Do you think that the proper determination of the child's best interest or the least detrimental is a legal decision within the competence of lawyers and judges or

Excerpts from Deposition of Joseph Goldstein

a psychological or social decision? A. I think it is a decision that has to be made in a court [39] of law.

• • •

[41] Q. All right. Let us take a child that is seven years old, who is placed in foster care with a particular— A. At the age of seven?

Q. With a particular foster-parent and the child's mother visits it every two weeks regularly, okay, in and at the end of that year, okay, can you say simply because the one year has passed, that the foster parent is now the primary parent in that child's life? A. No, I don't think you can say that • • •

• • •

[43] A. For purposes of deciding who ultimately should be the custodian, I would think you would want a good deal more information. For purposes of an orderly procedure in which that determination is made, I think it would be appropriate to presume that [44] the current custodian after that length of time is the primary custodian.

• • •

By Ms. Gans:

[I]f there is doubt about the ultimate outcome of the placement to make a shift prior to an ultimate determination because that only adds to a potential if not a very substantial detriment to the child's sense of who he is in relationship to whom, and in relationship to the outside world.

Excerpts from Deposition of Joseph Goldstein

Q. All right. Let us posit that there is no dispute, let us say. A. If there is no dispute, you ought to move the child immediately . . .

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[48] Q. You said earlier, I believe you testified that to some extent time limits were arbitrary? A. Yes.

Q. What do you mean by that? A. What I mean by that is that any statute whether it is a fixed time to a sentence in a criminal setting or a given age [49] as evidence of a sufficient maturity to vote, they are arbitrary in the sense that you make a societal judgment that these people are qualified or not qualified. There are always exceptions on both sides of the line.

So what I am saying just in order to maintain the system we have to plunk down for a figure • • •

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[52] Q. So you are saying you can't tell what kind of an attachment the child will develop with the foster parents in one year? A. You can tell that each time the child is placed for any substantial period of time, whatever its age, to the extent [53] it hasn't been totally damaged, to the extent it has some hope about the future, that it will try and hopefully the parents on the other side will try to give that child a sense of security and well-being that it hasn't got, his sense of trust in the environment and in those adults and ultimately, hopefully, in itself, and what you have described is someone who has been constantly hammered away at and saying, don't trust the environment, you can't trust yourself, you are going to be moved at whim or, well, that's your hypothetical.

Excerpts from Deposition of Joseph Goldstein

And I'm saying, don't create a process, justify another intrusion, particularly since you don't know whether the next move is final and is to be secure until you know what the next move is.

Q. When you are talking, trying to minimize detriment— A. Yes.

Q. —[W]hat do you see as the source of the detriment? And I will pose two alternatives.

Is the detriment primarily the break in the child's relationship with a person that it lived with for a year, or is the detriment what will happen to the child in terms of the care it will receive when it leaves that foster home? Where do you see the source of detriment? A. If you are talking from the child's vantage point, I [54] would guess both are anxiety-provoking experiences that would be very hard to digest and just adding another dimension that is going on. You have got two kinds of traumas being built in, saying you can't rely with all that going on inside you, you can't rely on the outside world to let you go home, sleep in the same bed, or be nourished by the same parents, or have a sense of care, being cared for, well-being. You are going to have to fend for yourself.

An adult can feel abandoned but he has the strengths often to cope with it, but putting the kid in another family, the same sense of bewilderment, only without the development over time of those internal strengths which permit dealing with those experiences.

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Excerpts from Deposition of Joseph Goldstein

[DEPOSITION CONTINUED ON MAY 13, 1975]

By Ms. Gans:

[44] Q. Professor Goldstein, I wanted to ask you, in connection with the ideas propounded in your book, can you cite any study on which you relied which did not deal with infants or toddlers, at most, and does not deal with institutionalized children? A. Not studies, only court cases, of which we have seen a large number, and consultations.

Q. Those would be individual court cases that you consulted on or that Dr. Solnit consulted on? [45] A. Or court cases where we read the transcript.

Q. Reported court cases? A. Yes, of course, we read a number of case histories of children who are not infants.

• • •

[52] Q. Would you feel that the evaluations or reports of psychiatrists would be more reliable than that of the social workers? A. Not necessarily. I make my judgments about people with different training in terms of the particular individual and what I learn about him or her and their reputation and what I know about their work. It is very hard to generalize, you get a good garage mechanic and you get a bum. The same goes for all professions.

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[53] Q. • • • In your opinion, a decision of a social worker might be as valid and reliable as a decision of a psychiatrist or a psychologist. A. An opinion of a

Excerpts from Deposition of Joseph Goldstein
Excerpts from Deposition of Albert J. Solnit

good, sensitive social worker may be as good as an opinion of a good, sensitive psychiatrist.

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[58] Q. On Page 57, you are talking about the Robertson study? A. Yes. It was a study of four infants that Mrs. Robertson fostered during short periods, while the mother was in the hospital.

I think most situations involve giving birth to another child.

Q. On Page 57, you testified that it was a very significant study even though it only dealt with four children? A. Yes.

Q. You said on Page 57, I quote: "We are talking about peoples as individuals, not statistics, because statistics don't tell us very much." If the four children are individuals and other children are also individuals, how do we apply the findings from one set to the other?

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[59] • • • You leave well enough alone. • • •

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By Mr. Kantor:

[70] Q. Are you familiar with work of David Fanshel?

[71] A. No, I am not.

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The deposition of ALBERT J. SOLNIT, taken at the Child Study Center, 230 South Frontage Road, New Haven, Connecticut, on Tuesday, April 1, 1975, commencing at 7:30 o'clock p.m., pursuant to the Federal Rules of Civil

Excerpts from Deposition of Albert J. Solnit

Procedure, before Robert W. Merchant, a Notary Public in and for the State of Connecticut.

• • •

[3] ALBERT J. SOLNIT, being first duly sworn by the Notary Public, testified as follows:

Direct examination by Miss Lowry:

Q. Would you give us your educational background after college? A. Yes. I received my Masters of Arts Degree in Anatomy at the University of California; an M.D. Degree at the University of California; and my Honorary Masters at Yale University. I am a graduate—well, I received full training in pediatrics and I am a member of the American Academy of Pediatrics. I have full training in general psychiatry and child psychiatry and analysis; and I am a member of each of the professional [4] associations which demonstrate that training or knowledge of this training.

• • •

A. I am the Past President, and this will indicate both my association and my role, Past President of the American Psychoanalytical Association; Past President of the American Academy of Child Psychiatry; Past President of the Association for Child Psychoanalysis; and am currently President of International Association for Child Psychiatry and Allied Professions.

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Excerpts from Deposition of Albert J. Solnit

A. I have authored or co-authored two books and edited or co-edited two books, also.

• • •

A. They are about child development, child behavior, and *Beyond the Best Interests of the Child*, which deals with child development and placement of children and they have had to do with psychoanalysis and general psychology and relationship between pediatrics, child development, and psychoanalysis.

Q. How many professional articles have you written?

[5] A. Over seventy.

Q. What do they deal with generally? A. They deal with childhood, normative and deviant aspects of childhood, crisis situations in childhood, deal with the roles of the family and the raising of the child. They deal with the way in which parents react to their children, and children react to their parents. They deal with accidents in childhood and the relationship of children to their families and society.

Q. Can you tell us the major positions you have held in your employment since you received your medical training? A. I have been on the faculty at Yale University, and now am Sterling Professor of Pediatrics and Psychiatry, and Director of the Child Study Center in New Haven; on the faculty of the New York Psychoanalytical Institute, and the Western New England Institute for Psychoanalysis.

I am a training and supervising psychoanalyst in both of those institutes.

I am a member of the Board of Human Services Institute for Child and Family Services; and I am a member of a Committee of the National Research Council of

Excerpts from Deposition of Albert J. Solnit

the National Academy of Science, which is concerned with child and maternal health.

Q. Can you give us an estimate of how many children you have evaluated and/or treated during your professional career? [6] A. Well over two hundred.

* * * I imagine I would estimate that perhaps ten per cent of the children I've seen over the years have been in foster care at one time or another.

I was a consultant to the Connecticut State Department of Welfare in terms of training foster parents, providing in-service training for many [7] years.

By Miss Lowry:

Q. Dr. Solnit, I believe you stated when you listed your publications that you were one of the authors of *Beyond the Best Interests of the Child*? A. That's correct.

* * *

[8] Q. Can you generally summarize the conclusions in this book?

* * *

A. The conclusions in this book state that when a child is in a situation in which there is a conflict about either his custody or placement, we are not dealing with the ideal alternatives, but already have reduced the alternatives for that child to where we would feel it would be more accurate and precise to speak of the least detrimental alternative, rather than to speak of the best interest of the child.

Excerpts from Deposition of Albert J. Solnit

We feel that the criteria for what will help the court or professional or enlightened person to decide what is the least detrimental alternative, will be those guarantees of the continuity of affectionate relationships that shall be uninterrupted and be supported on a continuing basis, that if there are [9] conflicts about placement that the deliberations about these should take place according to the child's sense of time, that the judgments should be made according to what represents the best information about the best quality of life for the child in the immediate present and future and not based on long-term predictions. In our experience and in the literature it is clear we have limited capacity for long-term predictions.

So on the conclusions, they are, if you can establish continuity of affectionate interest and the guidelines, and if you can make your judgment based on the child's sense of time, carefully but as quickly as meets that rhythm of the child's way of experiencing life, if you can be aware of our limitations in making long-term predictions and be especially careful of the child's life in the present and the immediate future, we will be able to at least provide the child with the least detrimental alternative.

Q. Upon what are your conclusions based? A. Those are based on three major items.

One is deliberate studies—especially in the field of the deprivation syndrome of childhood.

Secondly, on the literature that is indirectly or directly concerned with what promotes healthy development.

And, third, from our own amassed clinical experience in [10] the case of Dr. Freud going back to the early 1920's, and in my case, going back more than twenty-five years, in dealing with children in variety of settings over this long period of time.

* * *

Excerpts from Deposition of Albert J. Solnit

Q. Are you aware of any professional opinion within your field either in the form of writings, or in the form of seminars or professional meetings which support the conclusions in this book?

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A. Yes, I am. There are, of course, small pieces of literature in ancient times that are summarized rather well in *The Century of Childhood*, by Philip Avies, but in addition, there are contemporary and modern studies which are rigorously carried out in our field.

It starts out with *The Rights of Infants* by Margaret Ribbel, of Columbia, a monumental survey of all the [11] world literature by John Bowby under the WHO auspices, the studies of Anna Freud in Vienna and in wartorn England, especially in regard to the children who were taken care of by her staff in the Hampstead Nursery, by the studies by James and Joyce Robertson, including the film studies of Jane and John and two or three other children. Going back to their study of children in hospitals starting back more than ten years ago they have studied a fairly large number of children intensively, and by "large number," I mean perhaps up to a hundred children, although not reported on each one, each of the studies is based not only on a careful study of a small number of individual children, but also on clinical experience the two of them have amassed in England and about which they have advised in other parts of the world.

It included studies by Rene Spitz, in South and Central America, as well as in other parts of the world including some of the children whose mothers were sent to jail for crimes in the United States. It also included the study of deprivation by Sally Provence and Rose

Excerpts from Deposition of Albert J. Solnit

Lipton, the book titled *Infants in Institutions*. That study was done in New Haven, and was a study that involved upwards of fifty or more children, and over a five to seven year period with a seven year follow-up.

And here one has to keep in mind that studies that [12] substitute quantity for quality are simply misusing statistics and insulting, I would say, anyone with awareness of the complexity of the statements. —

• • •

By Miss Lowry:

Q. Dr. Solnit, based on your professional experience and training, have you been able to form a professional opinion with regard to the quality and nature of emotional bonds which can form between foster parents and children?

• • •

A. There are two major types of foster-child-parent relationships, those which are temporary and in which the temporary nature of the placement, leads to a warm, friendly attachment, but one which does not replace the prior attachment that continues between the child and the natural parents, especially and only if the natural parents are enabled to make frequent contacts with their child during the temporary placement.

Then there are those who are in long-term, so-called, [13] foster placement away from their families and these subdivide into two: Those in which they stay in one home, foster home, for a long period of time, and we in our own thinking have used the phrase, coined by Dr. Goldstein, to think of these foster parents as having a

Excerpts from Deposition of Albert J. Solnit

"tenured relationship" since it goes on indefinitely for a variety of reasons; and then there are those multiplicity of placements in which the child goes from one to another. The nature of the relationship in the last two, the second one which I called the "tenured" foster parent-child relationship, is a psychological relationship of primary nature which gets established.

These children feel that this is my mommy and my daddy, foster parents, and this is their home and they build their lives on the basis of the daily contact, the daily attachment, the daily feelings of love and sense of protection, the sense of feeling wanted and feeling an unqualified commitment from the parents. These are the criteria for establishing what we call the psychological parent that has been established and is maintained.

And those children who are long-term but live out childhood in multiple placement, the nature of the relationship is tragic because with each subsequent attachment, they are less able to relate to, to trust the world and the parents, that represent their world.

• • •

[14] A. If the child has been from an early age in foster placement for a short time and then goes on to another for a short time and then goes on to another for a lengthy time like a year or two, and then to another, it has a permanent effect in terms of a loss of emotional, intellectual, and social capacities. We have studied some of these and the loss appears to be permanent, narrowed or restrictive repertoire of emotional responses to human situations which ordinarily call for intense reactions and a wide range of reactions, and they also seem to form rather shallow attachments to other people. There is a lack of

Excerpts from Deposition of Albert J. Solnit

intensity of loyalty, a lack of a sense of permanence to these relationships.

Q. Now, you've also described at the beginning of your response to that question temporary foster care and different attachments.

[15] From the last two types can you define what you mean when you describe "temporary"? A. You are talking about the first category?

Q. Yes. A. By that, that has to be defined according to the developmental achievement and capacity of the child. Often for a shorthand we use the age, but we mean the developmental period for the child, his tolerance capacity, and his intolerance, so a child under two I would consider any placement over two or three months to be beyond that child's tolerance to stay related and to form an ongoing attachment to the person or persons with whom they had been living prior to the placement.

For a child from two years to four, I would say three or four months.

For a child under the age of six but older than four, I would say perhaps six months. And I would say that anything that goes beyond a year or eighteen months exceeds the tolerance of any child to, and here I'd define child as anyone under the age of twelve, because I think over the age of twelve we may be speaking of children who are able to express more mature judgments to a significant extent about placement and attachment.

Q. When you were discussing these time periods with the different developmental ages, would those be affected if there [16] were some form of contact during those time periods? A. Yes, they can be. Those time periods are the maximums for expecting in the usual situation that

Excerpts from Deposition of Albert J. Solnit

a child can retain the primary attachment but conditioned on the basis, on the expectation or condition that the condition is that the child should have frequent and regular contact with the natural parent or the psychological people he had before placement.

• • •

Q. Now, with regard to the bonds that form between a [17] foster parent and foster child which I think referred to the situation in which the psychological parent relationship is created— A. Yes.

Q. —can you make any comparison between that psychological parent-child relationship, and the relationship that exists between the child and natural parent who are living together in an intact family? A. Yes. I would say that the child who is in the foster home for a significant period of time so that a psychological child-parent relationship is formed, is less well off than a child who has remained continuously in the one home in which the new, from the newborn period although it is the least detrimental alternative—by that, I mean the child who has not had to be moved into a second home is better off because the permanence of the attachment and the relationships served to provide them with a good basis for their entire development of the childhood once, from one home to another, already there is a risk that there is a disruption of an attachment usually, and that means that it is a disruption, it is a stress or challenge to the child's development.

However, it can be mitigated and reduced to minimum by having an adequate substitute in terms of the replacement [18] parent who may be adoptive or, as we say, the tenured foster parents.

Excerpts from Deposition of Albert J. Solnit

Q. Now, describe to us briefly the process whereby children develop emotional bonds with adults. A. In the context of being born helpless, the child forms very strong attachments. As they unfold their capacity to perceive and to recognize and to respond emotionally to these people who feed them, bathe them, put them to sleep, clothe them, protect them from the dangers of life on a daily basis, an hourly basis, the relationship starts with a sense of being cared for totally by this adult when the child is helpless. It gradually enables the child, to become active in its own behalf. The physical dependency is replaced by a love attachment, a dependency of a psychological nature which in the normative situation is made up of love, of affection, expecting that parent to be all-powerful and all-wise in providing for safety, for nurturance and guidance. This includes being able to tolerate the child's anger and frustration and help the child to deal with all of the conflicts and stresses of life that are part of growing up and reaching an increasingly mature level of capacity to understand one's self, to understand the world, and to find satisfaction in a world that one has some influence on.

Q. How significant in this process is the fact of blood [19] relationship between the adult and the child? A. It is only of vital importance when that blood relationship becomes transformed into the psychological relationship and then because that mother and father feel a close attachment preceded initially in the pregnancy with the expectation of a child and watching and feeling as the mother goes through her pregnancy and labor and delivery and preparing for psychological attachment. They have an advantage and in this sense the blood tie is advantageous in enabling the person to form the psychological relationship.

Excerpts from Deposition of Albert J. Solnit

However, the blood relationship is no guarantee of an adequate parenting capacity or that the psychological attachment will form if a variety of either accidental or nonaccidental events take place that interrupt that relationship or distort or dwarf it.

Q. What do you mean by—can you list the events to which you are referring? A. Yes. For example, if a mother becomes ill and has to be hospitalized for the illness, no matter how well motivated she is, how much she loves the child, if she is hospitalized, the child is deprived because she must be in the hospital and then there is no psychological attachment forming between the mother and the child.

[20] Or if the two parents are killed accidentally when the child is two months of age, which we have seen, in an automobile accident, that child has no psychological relationship to the blood or natural parents, and indeed the child's chances for a sound development is based on the opportunity to form the kind of attachments I have described before to another set of parents.

• • •

[21] Q. With regard to a nonbiological parent during what period of times are sufficient relationships likely to come into existence with regard to different developmental stages of children?

• • •

[22] A. We would expect that in the first two years of life an attachment would begin within a three-month period, and have a fairly significant and active effect. We would think that as the child grows it takes longer because as the child is less helpless and begins to use their

Excerpts from Deposition of Albert J. Solnit

own self-starting capacities, they take longer to form the dependency that is part of the attachment to these foster parents.

So under six years of age it may take six months and if the child were eight or ten years of age it might take nine months. But it isn't something that you can say, it's not here today, but it's here tomorrow. • • •

However, because we must try to preserve the child, we arbitrarily say, well, by now the attachment is significant, even though it has been occurring very gradually and made up of repetition, patterns of care and satisfaction, and gradual crystallization of relationships, as a result of these common concerns in which the mutual needs of the child and the adult are met by this kind of parent-child interaction.

Q. Does the passage of time have any further effect on the existence of these bonds?

• • •

[23] Yes, passage of time may insure the attachment, if it is a steadily dependable one. The child's expectations and attachments deepen broadly and now become what we call permanent in the sense that the child expects them to go on as long as necessary to enable him to grow up to be independent and capable of starting their own family or friendships or own social groups.

Q. What effect does it have on the child to remove him from the home of an adult or adults with whom he has formed these psychological bonds? A. If it is a very short-lived move, and if the psychological parent or parents stay in touch with the child, it may have a temporary effect of being depressing and upsetting to the child.

Excerpts from Deposition of Albert J. Solnit

But if the child is taken out of the home suddenly for a long period of time beyond their tolerance of being able to remember or to feel the security of the previous parents, it has a devastating effect.

We have studied child after child in which this devastation registered, a loss of developmental progress that can be quantified within the area of speech, in the area of motility, in the areas of skills and competence.

[24] So no one should allow himself to take a child out of a home where there is a psychological relationship without knowing that there is a devastating effect especially if there is not an adequate replacement provided immediately for the young child, according to the child's sense of time and tolerance and, of course, for the older child proportionately so.

Q. Would this effect be likely to become compounded if this was two or three times that this was done? A. If one could put it in mathematical terms, it would be of geometric proportions. After three or four times, in most instances, the child doesn't try any longer to relate or please the adult or to form a warm attachment. They settle for a mechanical way of getting along.

Q. Would the effect be negative on the child if the child moves from one home in which he had formed a psychological relationship for some duration to another home with a second set of foster parents who were decent and adequate, would that affect how the child would react to the separation?

• • •

[25] A. It does have an effect because it means losing one set of parents and having to deal with the loss and simultaneously and now beginning to get familiar with

Excerpts from Deposition of Albert J. Solnit

an attachment to strangers. Gradually it can be overcome but if there are too many moves, no matter how adequate the foster home is, there is a permanent loss of human capacities according to our study and experiences.

Q. Would the loss be mitigated in the place to which the child were going to be moved, if it were from a home in which he formed psychological relationships with the adult, would that effect be mitigated in the child if it were going back to the natural parents? A. It would be mitigated to some extent in the relationship with the natural parents, if there had been frequent and regular visits by the natural parents, although there is still, as we can see in many of the studies, there is still the period of time in which the child loses ground and has an unstable period, and is more vulnerable to trauma.

But the mitigation is that they do return to parents with whom they have maintained a relationship and, therefore, some of the former psychological relationships become available to them in promoting their development and, therefore, it is mitigating.

[26] The reason I am being careful is, I don't want to give the impression there is no effect.

Q. What if the return to the natural parent takes place after the period during which you had defined as temporary foster care at the beginning of your testimony? A. We have seen in the Robertson report instances where if you exceed the child's tolerance for that period of separation, that they have a very storm, difficult period. Some of them recover a great deal and some seem never fully recovered. Let's say if it goes four or five years and only see their natural parents once every six months, there is in those instances a permanent loss from what we can measure in regard to clinical, psychological, and developmental assessment.

Excerpts from Deposition of Albert J. Solnit

Q. With regard to what you consider to be the least harmful consequence to a child, do you have an opinion on a process whereby the child is removed from a home in which he has formed psychological ties during the period in which the decision to remove is still under review and which may result in reversal of the decision to remove? A. Yes. As few moves as possible are best for the child. If he is in a stable situation, it is better not to move the child until the decision is made.

We have seen time after time in this state, in Virginia, [27] in North Carolina, where we have been consulted, where they move the child away from the foster parents in most instances, and these instances these children have been with the foster parents in each one of these instances more than a year, these are younger children, move them into a neutral home (which can hardly be so from the child's point of view) pending the decision.

During that period there is such an erosion of the child's developmental capacity. There is such as a sense of distrust and hurt, the world is alien and threatening, that these children have a difficult time when they return to the former foster home.

We have studied a small number intensively, and I think we have finally won over some of our own welfare people. They no longer do that invariably in this area.

Q. Do you have an opinion on the effect on children of moving them to a neutral foster home when there is a possibility sometime in the future of a return to natural parents, or the purpose of the move being to keep ties from developing too strongly in the substitute home?

• • •

Excerpts from Deposition of Albert J. Solnit

[28] A. Yes. We have seen it happen repeatedly when an agency decided that they must interfere with what they consider to be a [29] too close attachment between the foster parent and child. • • •

In those instances, the child suffers a great deal because they are put into a home which knows they are only there for a short period of time and they don't know whether they are going back to the previous home or to some other home.

• • •

I am only trying desperately to explain if they don't start seeing the child's point of view they are going to damage the child even though the concern of the agency is not that. The agency must be emphatic from the child's point of view.

Q. Have you been able to form a judgment with regard to whether children are capable of having desires and opinions about where they want to live? A. Yes, we always carefully in play therapy and in interviews and in our history try to get a factual inquiry about what the child would prefer. We make it clear the child is not burdened with the decision, so if they express a wish they are not putting themselves into a loyalty conflict.

[30] The situation is the responsibility of the custodial adult or those who have been asked by the agency to make the decision on legal grounds.

So we always take into account the child's preference and more often than not in the child's preference is a very important lead as to where the psychological attachment is.

Excerpts from Deposition of Albert J. Solnit

However, it requires interpretation, it often can't be checked with straightforward questions and answers. * * *

* * *

[31] Q. * * * If I told you that the New York law has a procedure for full administrative review of decision on removal of a child from a foster home subsequent to the time that the [32] removal actually takes place for it? A. Not prior to, but before?

Q. Subsequent to and for the purpose of determining whether or not the removal should have taken place, would you have any opinion about the psychological implications of that procedure on the children affected by it? A. Yes, I would. I think any such review process that takes place after the child has been removed is a travesty on the need of the child that the child should not be removed unless there are grounds for removal, on the basis of abuse or neglect. But absent those factors, I see no reason from the point of view of the child's best interest to carry out such a review process after the removal.

In fact, it exposes the child to unnecessary risks of multiple placement and such arrangements must have a connection with what an adult needs to do, but it is contrary to the best interest of the child.

Q. If I told you the foster parent role has been articulated as that of a custodian to care for the child over a period of several years, and then willingly and without objection return the child, the agency, when the agency determines that is what should happen, based solely on the agency's determination, would you have an opinion with regard to how psychologically realistic [33] this is with regard to the foster parents? A. First of all, if

Excerpts from Deposition of Albert J. Solnit

foster parents accept that knowing it will take place in several years and are then required to return the child at a point where the agency thinks it is desirable, such foster parents are at risk themselves of changing their minds as they become attached to the child because they will, if they are having the experiences that most parents have, they will realize that a child of theirs is being taken away. We have such people coming to us to try to find help as they come and ask for help in changing an agreement because they realize it is a painful injury to themselves and even more so to the child especially as in some instances there have been no visitations or almost none, but occasional postcards or occasional gifts from the absent parent, and I don't mean to imply that the natural parent is necessarily a person who has a poor motive to the children. The removal may be because of illness or other circumstances I have outlined.

From the child's point of view, that is psychological abandonment, and that abandonment situation was taken care of by being attached to the foster parents on a long-term basis and from the child's point of view, it is devastating.

Q. From the child's point of view, what effect is such a policy likely to have? [34] A. It has a devastating effect on the child. In the most dramatic instances, we hear of them being torn out of the foster parents' arms and given to the natural parents and we know of others from our consultations and our own experience clinically here, which go far beyond my individual experiences, the Director of the Center, I hear of most of the cases here. And since we treat upwards of five hundred children a year, it means we have broad experience of how children react.

They are devastated, they wonder what has happened to the world, and it is full of frightening possibilities

Excerpts from Deposition of Albert J. Solnit

that something like this will happen again. They fight to stay with the foster parents who from their point of view often are really their only mother and father.

Q. Have you had any experiences either directly or in supervision of children being seen, with agency decisions either locally or anyplace, child care agency decisions, removing the children from the foster home with which you disagreed? A. Yes, I can cite instances, many of them in Connecticut, but also in New York and North Carolina, in particular, and in Pennsylvania.

Q. Do you have any, based on just the cases that you have seen, do you have any opinion with regard to how many agency decisions to remove children are contrary to the children's [35] interests?

• • •

A. I cannot give you a good answer to that because those that are called to our attention are those where the agency has made an error. I don't know what percentages of instances that would be.

• • •

[36] Q. Doctor, let me give you a hypothetical and see whether [37] or not you can come to any substantive conclusion with regard to whether it is in the child's interest to be removed from the situation.

Take a situation in which a sister and brother nine and six years old have lived with the foster mother for four and a half years. The natural parent either legally surrendered or abandoned the children and has not seen them in any case during the period.

Excerpts from Deposition of Albert J. Solnit

The foster mother was a woman of fifty-three and with arthritis, possibly she either does or does not get around her house as well as someone without arthritis would, but there is no allegation that she could not physically care for the children or that the children were not developing normally emotionally.

• • •

And the purpose of the removal is to put the children into a group home with the possibility of adoption for the younger child and continued foster care for the older child? A. In another foster home?

Q. Yes. Do you have an opinion with regard to whether or not the removal should have taken place based on the facts I've given you? A. There is only one question. This foster mother was [38] positive about keeping the children?

Q. Very much so. A. I think it is an incredible cruelty that has been imposed on these children because from their point of view this mother was their mother and is their parent and they are being taken away, being kidnapped, in a sense, and the fact that it is legally so, is no less violent than any other kidnapping, and the state should not do it.

Q. Just one other hypothetical of a situation of an eleven year old boy in foster care five and a half years with the same foster family, originally taken from his natural parents at a point at which an abuse petition was going to be filed against the parent with regard to the entire sibling group, and in which the allegations of abuse were substantial and—

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Excerpts from Deposition of Albert J. Solnit

At the time he came to the foster care was while he was on his way to state institutions and he has remained with the foster family for five and a half years and the foster family does not want to legally adopt the child because they are philosophically opposed to it, but they want the child to remain [39] with them as if he were adopted and seek legal guardianship for the child.

Do you have an opinion with regard to the removal of the child from that foster home? A. Yes, I do.

Q. What is that? A. It would be contrary to the best interests and what I hope to be the rights of the child to not be allowed to remain in a home where he feels wanted, where he feels that he is now related on a primary basis to that mother, and she to him, or he to the parents, and so forth, and that again he is to be subjected to some kind of manipulation by the state. In fact, I consider it in a sense an intrusion into the privacy of that family under those circumstances, trying to take a child away or suggested in that hypothetical case.

Mrs. Gans: I would like to note this objection for the record. Miss Lowry, by way of the hypothetical question, has presented her version of the facts of two plaintiffs.

The Witness: These are hypothetical questions only, and that's the reason I referred to them in the hypothetical.

[40] Q. And, Doctor, I am only asking you to answer with regard to the facts that I am stating to you on the record, and the last hypothetical situation is a situation of four siblings, four sisters presently 12, 11, 9, and 8, all four children in foster care four and a half years.

Excerpts from Deposition of Albert J. Solnit

The two oldest children were with foster families two and a half years; the two youngest children in one foster home for two years, and in the same foster home as their older sisters for two and a half years.

The natural parent is visiting sporadically during the four and a half year period, the children's reaction of the visiting being very infrequent and periods of time amounting up to a year of no visiting at all, of the children remembering instances of serious neglect prior to placement and the children stating that they absolutely do not want to ever leave the foster home or have anything to do with the natural mother or visit with her.

Now, the foster parent is seeking to keep the children with them. Do you have an opinion with regard to that situation?

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[41] A. With such infrequent visits over a four-year period, no one of those children could have retained a primary tie to the mother, the natural mother, if the foster placements even those two in each group were adequate, it certainly fits our harsh reality of the least detrimental alternative and it would be a violation of those children's needs and rights to take them out of the foster home in which they are and return them to the natural mother, however well motivated she may be and however much she may now be capable of not neglecting the children.

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[52] And you reached a conclusion, did you not, that a psychological parent-child relationship, a new one, would begin to form for a child less than two years at a three-month placement, and for a child less than six years at

Excerpts from Deposition of Albert J. Solnit

six months, and for a child between eight and ten at nine months.

Can you tell me how it was that you arrived at those particular figures, and those particular ages? A. Those are estimates. This is not something you can determine with mathematical precision. It's a manner of speaking, and it's a way of talking about how a child's memory serves the child, to keep alive the attachments, the feelings, the sense and [53] presence of those people, the parents who have been connected with an in care of the child, and it's a way of estimating the length of time it takes for the same children, in these different ages, to begin to know and have a sense of the new people to whom they are attached.

I wouldn't put much weight on the actual figures; those are really estimates.

Q. On what did you base those estimates? A. Well, I based the estimates on the fact that in cognitive, the knowledge about cognitive psychology, for example, until a child is about nine or ten years of age, they don't have the ability to conceptualize performance, they don't have the ability to conceptualize some aspects of time, which you have to do with the life span, whereas a child under the age of two has no way of being able to estimate time beyond a day or two at a time; and then I put into it the estimate of what a school-age child would know in terms of conceptualizing the calendar, how they would be able to discuss their separation from parents, and it's that kind of information, both from clinical and from Piagetian cognitive psychology that enables a clinician to form such judgments, estimates, I would say.

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Excerpts from Deposition of Albert J. Solnit

[104] Attachments are formed much more quickly and indiscriminately in the first few weeks of life than they are, let's say, by the time the child is eight or nine or ten years of age, where a whole host of experiences, of developmental capacities to differentiate, to think, to remember, to initiate, to influence their environment with their own behavior now make them much more of a participant and much less of a passive party to the attachment relationship, and so as their sense of time moves toward the adult sense of time, their capacity to attach themselves to new people or to give up old attachments moves toward the same character—moves towards the adult characteristic ways of dealing with the loss of important individuals and the [105] formation of new attachments.

It's not precise, I use the word "associated with" because I don't think there is a point for point relationship, but there is a pattern relationship, as you move from one developmental period to another.

By Mrs. Gans:

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Q. • • • [O]nce memory persists, what function can memory alone play in survival of attachments, and then how is it different from memory with some contact?

A. Well, under the age of four or five, memory is not a very strong ally in being able to retain broken attachments or the loss of a person that's been important to the child. They may remember quite clearly who the person is, but the memory is not a sufficiently—does not represent a sufficient replacement for the presence, the physical presence of the person for a young child.

A young child needs the physical presence, as well as the psychological presence of the adult in order to feel

Excerpts from Deposition of Albert J. Solnit

safe and protected and nourished and guided and stimulated.

So although the memory may get to a point of four or [106] five where they can remember the person over a year or two-year period, that is not a sufficient replacement for the missing person. When you are fourteen or fifteen, the memory and its meaning to you, your ability to use it to guide you and to reassure you and to give you a sense of a presence, is much more important in the functioning of the child and, therefore, the older child, the teen-ager, can tolerate the absence and may not need as immediate and total a replacement, but at the same time, the teen-ager is now able to contribute much more to the decision by being articulate, logical, realistic and able to present a point of view, if they have one, that will influence and should influence the decision maker more than the wish or preference of the four year old.

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[110] Q. I'm coming to a next question. Are you saying that if that is so, and contact is maintained, and then at the end of a year, let's say, you would not—you would want that child returned without weighing the relationship that's formed with the foster parent? A. You're now citing a different case?

Q. Yes. A. A child who is how old?

Q. Seven. A. Seven, who lives for a year in a foster home, and is visited frequently by the parents?

Q. Well, let's just say the maximum permitted by the agency regularly. A. Which is what?

Q. It's every week, every two weeks. It varies. A. And the plan was for the child to return to the father?

Q. Yes.

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Excerpts from Deposition of Albert J. Solnit

Miss Lowry: You're asking if there should be an [111] automatic return, is that essentially your question?

Mrs. Gans: Yes.

A. I wouldn't see why the child shouldn't be returned to the father if no one objected. • • •

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[117] A. As a psychiatrist and psychoanalyst, if I were asked what would be in the best interests of the child, vis-a-vis that question Mrs. Gans has raised, I would say that before a child is moved from where they are living and forming attachments, if there is some question that needs to be resolved, it's best to resolve it before the child is moved, although you will realize that there is another guideline in this that must be followed if that—if the recommendation I have made is to make sense, and that is that the hearing must be immediate and it must be respectful of the child's sense of time so that there is no lengthy delay, because children do not tolerate delay, especially young children such as a four year old.

Therefore, if someone has something to say, which might hold up the decision, I prefer not to move the child until that's been clarified, but it should be clarified immediately.

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Q. • • • When a child comes into placement, in your opinion, an agency should never tell a parent that they can assure the child's return? [118] A. Well, I would say they can say within reasonable limits, we can assure your child's return, if the following conditions and plan are

Excerpts from Deposition of Albert J. Solnit

carried out, but they should certainly be able to say also to foster parents, if something—

Q. To the parents. A. To the parents, to the natural parents, if something different happens, if the plan is not carried out, then one would have to look at the situation in light of the changes, and I would assume that one can't, you know, predict exactly what's going to happen in a six-month period. One can predict pretty much what may happen, or one could make a good plan and one could do what one can do to assure the successful execution of the plan.

Q. But let's say the plan has been carried out, you still would want the foster parent to be able to stop the return of the child? A. I didn't say that.

Q. What do you mean? A. I said if there is a conflict, then I would like that conflict resolved before the child is moved. That's all I said. And with great respect to the child's sense of time.

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[120] Q. When you say that temporary foster care under no circumstances could last more than eighteen months, aren't you, in fact, selecting time as a criteria above all others? A. No, not really, because there was a built-in assumption in that line of questioning that there—where there was no visit, there is no contact between the child and the parents, and to say that we can make time the overarching guideline would be to leave out the fact that we put aside time problems if we can maintain through visitation and through frequent contacts the continuity of the relationship.

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Excerpts from Deposition of Albert J. Solnit

[121] Q. • • • But then you are not saying that time alone determines whether a child in a foster home forms a psychological parent-child relationship and time alone does not determine whether a preexisting parent-child relationship is destroyed? A. Passage of time in itself is only one dimension. It is a very important one, but there are other dimensions, as well.

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[126] Q. • • • [at] page 22 of Beyond the Best Interests of the Child there is a statement that legal adoption is no guarantee that the adopting adult will become the psychological parents, and I wonder if you could expand on that? A. Yes. What we are saying is that putting two people into physical proximity doesn't guarantee the establishment of psychological ties. It depends on the motivation of the parents, the needs of the child, and in the older child, the motives of the child; so the process of establishing a psychological tie is one in which there is a mutuality of the child's needs and responses to the adult's expectations, and care, and if they are not motivated toward establishing that pattern of relationship, then the psychological ties will not be established.

We simply want to make the point that there is a process, and it's not a matter of physical apposition.

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Exhibit No. 1, Resume of Henry Ulmann Grunebaum, M.D.

EXHIBIT #1

HENRY ULMANN GRUNEBaum, M.D.

- Born June 5, 1926, New York City
- 1943-48 A.B., cum laude, Harvard College
- 1948-52 M.D., cum laude, Harvard Medical School
- 1952-53 Intern in Medicine, Beth Israel Hospital Boston, Massachusetts
- 1953-55 Resident in Pediatrics, New York Hospital
- 1955-57 Resident in Psychiatry, Massachusetts Mental Health Center, Boston, Massachusetts
- 1957-59 Fellow in Child Psychiatry, Boston City Hospital Child Guidance Clinic
- 1957-59 Visiting Physician in Pediatrics, Boston City Hospital
- 1959-60 Resident in Psychiatry, McLean Hospital, Waverly, Massachusetts and James Putnam Child Guidance Clinic, Boston, Massachusetts
- 1960-65 Senior Psychiatrist, Massachusetts Mental Health Center
- 1960-67 Staff Psychiatrist, James Jackson Putnam Child Guidance Clinic
- 1960-62 Assistant in Psychiatry, Harvard Medical School

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- 1962-63 Instructor in Psychiatry, Harvard Medical School
- 1963-68 Clinical Associate in Psychiatry, Harvard Medical School
- 1963-67 Director, Joint Admission and Child Development Study, Massachusetts Mental Health Center
- 1965-67 Resident Education Director, Laboratory of Community Psychiatry, Harvard Medical School
- 1966-67 Psychiatrist, Tunisia Peace Corps Project Wheelock College, Boston, Massachusetts
- 1967- Senior Psychiatrist and Supervisor, Southard Clinic, Massachusetts Mental Health Center
- 1967-72 Director, Intensive Nursing Aftercare for Psychotic Mothers, NIMH Grant, Massachusetts Mental Health Center
- 1968-71 Assistant Clinical Professor of Psychiatry, Harvard Medical School
- 1968-69 Lecturer, Boston University School of Theology, Boston, Massachusetts
- 1968- Senior Psychiatrist in Family and Group Therapy Cambridge Hospital, Cambridge, Massachusetts
- 1971- Associate Clinical Professor of Psychiatry Harvard Medical School
- 1972- Director, Center for Studies in Population and the Family, Health, Education & Welfare Grant

*Exhibit No. 1, Resume of Henry Ulmann Grunebaum, M.D.**Membership*

American Group Psychotherapy Association
 New England Council for Child Psychiatry
 Group for the Advancement of Psychiatry
 American Orthopsychiatric Association-Fellow
 Examiner, National Boards of Neurology and Psychiatry
 President, Northeastern Society for Group Psychotherapy, 1970-72
 Society for Family Therapy and Family Research
 Book Review Editor, International Journal of Group Psychotherapy, 1971-
 Governor's Advisory Council on Home and Family
 American Psychiatric Association—Ethics Committee
 National Board—American Group Psychotherapy Assoc.

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2. Grunebaum, H. and Altschule, M.D.: Sodium Concentration of Thermal Sweat in Treated and Untreated Patients with Mental Disease. *Archives of Neurology and Psychiatry*. 63:641-649, 1950.
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[13] *By Ms. Gans:*

Q. Is the question of the development of bonds and family ties a settled matter in the area of psychiatry, family-child psychiatry or is it controversial, or could you explain? A. This is a comparatively recent issue of interest. That is to say, in the 30's research was developed by Spitz and others, which suggested that children reared [14] in bad institutions fared very badly; and from this in the early 40's, Bolby wrote a very important monograph reviewing the literature on what is called maternal deprivation, leading to the conclusion that the child required a sustained and significant contact with his mother in order to be a healthy individual.

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

That conclusion was very influential in psychiatry and in general practice of pediatrics and to a considerable extent was exemplified by the writings of Spock in this country who emphasized the importance of mothers staying home to care for children.

Recently, as much more research has accumulated, people have learned—Maybe it will be useful if I cited Michael Rutter, *Quality of Mothering, Maternal Deprivation Reassessed*, who states, "What has been thought to be necessary for adequate mothering is a loving relationship which leads to attachment which is unbroken, which provides adequate stimulation, and which mothering is provided by one person and which occurs in the child's own family."

Each of these 6 ingredients has been called into question in the last 20 years, and the areas and the nature of the influence of these variables is still under study. * * *

* * *

[17] Q. O'Kay. What is the meaning and importance to the child of the bonds it develops to its own parents? A. That again is a complicated question. First of all, it is usual that the child's tie to his own parents is a persistent tie and remains throughout the relation of the child's life; so that the development of those ties is the beginning of a lifelong relationship.

Second of all, the nature and quality of those ties tends to influence the nature and development of future ties. A child who develops a warm trusting [18] relationship with a parent early on is likely to be able to develop other such relationships with other individuals later on, whereas a child who has had a difficult relationship with the mother is likely to be predisposed to difficulties in future ties.

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The nature of these ties, in addition, is important because these are the ties which place the child in his historical and biological continuity. He is a member of an ethnic group. He has gained a history of family experience, family culture.

The persistence, for instance, of the ethnic groups in this country bespeaks the importance of cultural heritage; and in addition, there is the importance of locating oneself biologically. One knows who one looks like, whose traits one has inherited. All of these characteristics bespeak the importance of these early relationships.

* * *

[20] Q. Does a child's ties to its parents prevent it from developing ties to caretakers such as foster parents? A. No, not at all. In fact, one would assume the [21] better the tie with the mother, the better the tie should be with the foster parent and vice versa.

Q. O'Kay. Is there any evidence that if a child develops an attachment to a foster parent or any non-parent, that the new attachment will displace or replace the child's attachment to its parents?

* * *

[22] First of all, I don't think—Replacement sounds so much like you take a spark plug out of a car and you put another spark plug in; and I don't think that is the nature of ties, to parents. That is, a child can have multiple ties to different people having different nature and different qualities; and I don't see that one can view this as replacement—It's the wrong way of looking at it.

* * *

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

[29] Q. Is it possible to predict whether a child will develop an attachment to a foster parent simply because it has lived in the foster home for a year? A. I don't think so. I think attachment is influenced too much by the quality of the relationship to make the prediction that that would occur. A foster child could have a loving and a caring relationship with a foster mother, and they could develop a very strong tie, fairly quickly; and a foster child could have a hostile and unhappy relationship with a foster parent who would be viewed as a provider of food and supplies, but not of [30] affection. It is impossible to predict.

• • •

Q. • • • I would also say that how a child responded to a natural parent upon being reunited with them would be a very poor predictor of what things would be like over the long haul.

• • •

[31] Q. Would you agree with the proposition that in the case of a child between 3 to 6 years of age, its ties to its biological parents cannot survive a separation of more [32] than 6 months? A. No, I wouldn't agree.

• • •

[T]he G.A.P. committee that I am involved with is writing a set of guidelines for custody and divorce cases, and one of the things that this is based on is the experience of family psychiatrists of the importance of one's ties with one's family over the generations and of the need of people to be members of families having a history; and to the extent to which this historical continuity is fostered, it would promote [33] health.

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

I think it is analogous to the situation in the instance of a divorce where perhaps the parents are separated geographically and the child spends two months in the summer with its father. Even if the child sees the father for one month every summer, a 3 or 4 year old child clearly would maintain a tie with that father over that period of separation of 10 or 11 months; and the degree to which the child's mother would foster the continuation of that child would be a major influence in the child's perception of himself and his father.

• • •

Q. I want to go back to the question of measuring separation by time. Would you agree with the proposition that in the case of a child 6 to 8 or 9 years of age, its ties to its biological parents cannot survive a separation of more than a year, regardless of whether or not there is [34] contact? A. No, I wouldn't. • • •

In other words, we have data to prove that it is not a foregone conclusion that a 6 year old's ties to a parent cannot last a year. We have negative data. I don't know anyone who has demonstrated positive data.

To the best of my knowledge, there is no reason to believe, based on any data in the literature whatsoever, that a child 6 years old, ties to its mother will not survive a year. I have heard of no such evidence.

Q. I want to go to the next group.

Would you agree with the proposition that in the case of a child 9 to 12 years of age, its ties to its biological parents can't survive a separation of more than 18 months? A. I think I would say exactly what I have said about the younger children. To the best of my knowledge, there is no data to support that proposition; and whatever [35]

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

data one has in one's own clinical experience would support the view that the contrary is the case. * * *

* * *

The Witness: I cannot believe that Goldstein and Solnit or any other expert in child psychiatry would maintain that a child of 8 to 12 separated from their father or mother for as much as 2 years would not wish to meet that parent and have some strong feeling about them. I would predict, in fact, that the tie would be lifelong.

* * *

[39] Q. * * * Is the separation of a child from foster parents after a year comparable to the separation of a child from its own parents? A. Here we again have the word "comparable" and I would say the same thing about comparability that I said earlier. Namely, that these are different ties, and the reaction may have similarities; but that doesn't mean that it is the same.

* * *

[40] In a sense, one is asking for the following comparison. A child is separated and is in foster care for a year at some period during its life; and then at age 25, one is trying to ask is that child better off if it stayed with its foster parents or if it stayed with its natural parents; and to the best of my knowledge, there is no data to support either position.

[T]hat study has simply not been done, and the quality of care in these two homes is of critical importance; but we do know that the child has certain needs to locate himself biologically and historically. We do know that the child's tie to a biological—the child's biological mother

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

has certain specific ties to the child that an adoptive parent is less likely to [41] have; and we also know that what happens in that year is of great importance to the extent to which the child's foster mother fosters a relationship with the child's biological mother.

Q. If we take, for example, a child that enters a foster home or foster care at the age of 5 years and has continued contact with its own parent, at the end of a year a decision has to be made whether to return the child home.

In making that decision, where in your opinion would be the greater risk to the child's development? Continuing the child's separation from its own parents or to separation of the child from the foster parent? A. I think I would be inclined to return the child to its biological parents in such cases.

I think the evidence would have to be extremely compelling that the child's relationship with the biological parents was harmful to the child for me to indicate otherwise. It seems to me that to the extent to which foster parents feel that they can obtain custody of children either de facto or de jure, to that extent, first of all, it mitigates against biological mothers feeling comfortable about using foster care; and thus, they would be inclined to press other people [42] into service, either relatives or other people informally, to avoid the likelihood that they might lose a child when, in point of fact, it would be in everyone's best interests for the child to be in a good foster home.

Furthermore, it places a potential incentive on the child's foster mother to separate and attenuate the relationship with the child's biological mother which can only be bad for the child. So that I think that that can only be harmful. It is very analogous to the issue I spoke of

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

earlier about custody. It is in a child's interest to feel that its biological parents are good people, that its heritage is a worthy one; and to the extent where one feels that his heritage has been denigrated, it seems to me to that extent one would suffer identity problems in later life, feeling that there is a part of oneself that is unworthy of respect.

I asked you the question about the 5 year old child in foster care for a year with continued contact with its parents.

Would your answer be different if the separation was for 18 months or 2 years, as long as there is contact with the parent?

[43] Mr. Bienstock: I object to the form. Go ahead.

A. I think to the extent to which there is regular and frequent visitation, I think I would be inclined to return children to their biological parents, irrespective of the duration of the foster care.

• • •

[45] Q. Doctor Grunebaum, are you familiar with the work by Freud, Goldstein and Solnit, entitled *Beyond the Best Interests of the Child*?

• • •

• • • Yes, I am familiar with it.

• • •

A. I think it's a terribly important book and in many ways a very useful book and many of the things that it states.

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

The particular thing that I think is most useful is the emphasis, the need for speed and decisiveness [46] in custody hearings; and that the present situation where hearings are likely to be drawn out over many months and years leads to a situation in which the de facto situation becomes fixed because the decision gets postponed indefinitely.

I think it is very bad for children because uncertainty of location is bad for the parents and bad for the child. So that I think that principle is very important, and I think the principle that one should take the child's point of view and have a perspective on child development is very important.

However, I think that their view that the child has one psychological parent and that this parent needs to be in total control and maintain as constant is erroneous.

Q. What is the basis of your disagreement? A. Well, I have indicated the evidence that supports the view that children have multiple attachments. I have indicated the view—See, I think Goldstein, this particular book draws its conclusions on the basis of psycho-analytical theory and psycho-analytical theory is only one of the ways we have of understanding children and their development today; and the evidence from psycho-analytical theory is largely gathered from the [47] study of psycho-analysis.

It ignores the considerations of child psychology, and it ignores the considerations of family research and family therapists. I think it ignores common sense in fact; that there are too many everyday examples of children having strong attachments to a father who has gone away to the Army to believe that a child has only one attachment and that one attachment is all important.

This more common sense view is supported by much of the research I have cited to you already. What I think

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

Goldstein and Freud meant or should mean really by constancy is that the child needs some sense of stability, that there is somebody that can be depended on. But that person who can be depended on can be different people can be several people over the child's life, that a child in the normal course of development will turn to a mother at certain ages and a father at certain ages.

• • •

[48] Q. What is your opinion of the concept of the psychological parent as described in the book? A. I think I have said that already, indicating that children have multiple psychological parents and the psychological parents need not be the biological parents, need not be a woman, and need not be the central care giver.

• • •

[49] Q. In your opinion, and this is I believe a view advanced in the book, should only the child's interest be considered in placement decisions?

• • •

[50] A. No, I don't. I believe that the welfare of all parties to a custody hearing need to be taken into account; and in particular, experience in family psychiatry and work in family psychiatry and family therapy leads to the conclusion that while it is very important for children to be cared for and needed by their parents, it is very important for children to feel that there are things that they can do for their parents and that their parents need them; and one sees instances of the importance of children feeling that they are useful to their parents and

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

that they take their parent's welfare into account, and children will feel very guilty in adult life if they have some feeling that they have left a parent in the lurch in one [51] way or another when that parent needed them.

So it seems to me from the child's point of view, it is important that one takes the parent's point of view into account and vice versa.

• • •

[57] *By Mr. Kantor:*

Q. Fine. Doctor, would you be able to state without more information that a natural parent-child psychological parent-child relationship is replaced by a subsequent [58] psychological parent-child relationship after a period of a year? A. No.

Q. Let's suppose there is no contact during that year with the natural parent by the child. Would your answer then be the same? A. I guess it would be the same, yes.

Q. Suppose it was after 18 months. A. It would continue to be the same. • • •

So that I don't think that one can state a time period where it is clear and obvious that it is in the child's best interests to stay in foster care, for instance. You know, I guess that's about it.

Q. In a previous deposition in this action Doctor Goldstein at Yale testified in Court that a child separated, regardless of age, regardless of contact, more than 18 months, feels abandoned by the natural parent and generally within that period of time a new psychological [59] parent-child relationship develops. Would you agree or disagree with that statement?

• • •

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

A. I would disagree with that statement. First of all, it ignores the quality of the previous relationship and of the ongoing relationship. Second of all, it ignores the age of the child.

Third of all, it ignores the extent of contact of the child during the intervening period, and I have already indicated that children probably upward of 3 or 4 retain an ongoing memory of any major attachments that they have had for the remainder of their life; that there is no such thing as the psychological parent, that there are a variety of significant and central attachments in people's lives, out of which they form an identity.

To the extent to which they feel that some of these central attachments are in conflict with other central attachments, to that extent they will have difficulty forming a coherent identity for themselves.

Q. Doctor, would you say that— A. I want to add, I would also like to state that I do not believe that Professor Goldstein, whom I have [60] discussed these matters with, can cite any evidence to support his point of view; that it is a matter of personal opinion.

• • •

[62] Q. Doctor, can you conceive of any situation where a continuation in foster care with a foster parent is preferable to the return of the child to the natural parents, where that natural parent is fit and wants the child? A. I wish I knew the answer to that particular question because the most difficult form of it is the child in foster care from birth on for a considerable period, who the natural mother wishes to have him back and she is fit and able.

I think my inclination would be to return the child to the natural mother or parent at that point.

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

Q. Even in that most extreme situation? A. Yes, even in that most extreme state; but I have to state that is a personal opinion, and that the evidence to support that opinion or the obverse opinion is lacking.

• • •

[67] Q. You testified I believe in response to a question from Ms. Gans that where a child was in foster care for 6 to 18 months—and I believe the question was a young child of 5 years old, that it would be a major loss, I [68] believe were your words, for a child to leave foster care. A. Yes.

• • •

Q. You also testified in response to a further hypothetical that in the case of the 5 year old who is in foster care for one year, you would be inclined, to use your words, to return that child to the biological parents. A. I did.

Q. And that the evidence would have to be compelling to do otherwise. A. Yes.

Q. Now, there could be evidence I take it from that answer that would lead you to another inclination. Is that correct? A. Yes, there could be.

[73] *By Ms. Gans:*

I believe I asked you which decision in your opinion involved greater risk to the child; to put it another way, greater loss to the child—to return home or to be separated from the foster parents. A. I believe my answer would be not to return home [74] would be a greater risk, all other things being equal; and that there is unfortunately very little hard information in that area.

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

It is a matter very much of opinion, based on a variety of variables that we have discussed today.

Q. And does your answer assume that the separation from the foster parents entails some loss of the child?

A. It does indeed. It entails some loss for the child. It entails a period of readjustment to the natural mother, and I believe that loss and that separation is probably better for the child to go through.

Recross examination:

Q. (By Mr. Kantor) Doctor, you testified in response to a question by Mr. Bienstock that there could be evidence to indicate that your inclination to return a child to a natural parent, to change such inclination. Could you tell me what kind of evidence you would need? A. Well, I think I would require evidence, for instance, of physical abuse. That would be the kind of evidence that I would think of. Gross psychological or physical neglect would be the kind of evidence that would be important evidence, that the child's parent was alcoholic and that occurred frequently to the child's detriment.

You see, I think those are central factors in [75] this business. I think the problem of fitness is a very difficult problem because socioeconomic and educational conditions so often enter into our view of what is fit and what is unfit; and that in my experience, a foster parent tends to be a couple of a higher socioeconomic class than do the biological parents in many of these cases.

Q. In other words, Doctor, you are telling us that the evidence you would need to refrain from returning a child to a natural mother or parent would be the same types of evidence that would mandate removing the child

Excerpts from Deposition of Dr. Henry Ulmann Grunebaum

from the natural parent in the first place. Is that correct, Doctor? A. That is correct.

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Transcript of Trial on March 3, 1975

[6] MARIE R. FRIEDMAN, called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination by Ms. Lowry:

Q. Dr. Friedman, what is your occupation? A. I am a psychiatrist.

Q. Where are you presently employed? A. I am director of the girls—the Young Adolescent Pavilion at Long Island Jewish Hospital.

• • •

[7] Ms. Lowry: I move to have this introduced as Plaintiffs' Exhibit 1, and at this time on the basis of this curriculum vitae I would like to have it stipulated that Dr. Friedman testifies as an expert witness. Counsel for Foster Children plaintiffs has agreed to that, and counsel for the State has agreed to that. I haven't had an opportunity to ask the other counsel whether they will agree to that.

Mr. Hoffman: No objection.

Mr. Gallagher: No objection.

• • •

[8] The Witness: I run a psychiatric unit for adolescent, for young adolescents as part of the Long Island Jewish Hillside Medical Center.

Coupled with that is a day hospital program and an after-care program that I was instrumental in having established because of the necessity, the vital

Dr. Marie Friedman—for Plaintiff, Foster Parents—Direct

necessity of there being continuity in care, particularly for people in the young adolescent group.

In addition to that we have a new program that consists of a residential facility, youngsters not living in the hospital but living in a group home situation and coming to the hospital on a day hospital program.

I mention this and it is important and bear with me for a moment, because it is unique and because I think the need for this kind of facility has bearing on this particular case.

These are youngsters who have been abandoned, who having the way of juvenile court, who having the way of flunking out of foster care, ultimately ending up in [9] State hospitals, but because there is no other facility for them and then five years later we take the wreck and the debris of what is left and these are the youngsters that we are working with.

In addition I am consultant to the Town House School and the Lake Road School.

Q. Dr. Friedman, have you had occasion to evaluate and work with children in foster care? A. Yes. About 20 per cent of the children that we admit to our service are children who are referred by various agencies who are in foster care placement and come to the hospital for treatment, either temporarily and replacement after that, or return to the foster care setup.

Q. Based upon your professional training and experience, have you been able to form a professional opinion with respect to the quality of the emotional bonds which can form between foster children and foster families? A. Certainly.

Dr. Marie Friedman—for Plaintiff, Foster Parents—Direct

Q. What is that opinion? A. That biology plays very little part in the kind of bonds that are formed or can be formed. The capacity to relate and to form a bond between an adult and a child is dependent upon the two people involved. Certainly with a foster child, their hunger and need for nurturing and [10] sustenance can be even greater than with a natural child.

Q. Based upon your professional training and experience do you have an opinion on how this bond can compare to the emotional bond between a child and his biological parent?

• • •

A. The reason I asked you to clarify is that I think we all assume that between a natural parent and child there will be a warm, wholesome warm existing bond, which isn't necessarily the case. By the time a child is a foster child, they have already been hurt, traumatised and abandoned and because of that this will be an area of enormous sensitivity and consequently the bond that will then form between a foster child and a foster parent will initially be a little guarded but then after that, and after a sense of trust has been established, it could even be greater having already been abandoned by a natural mother.

[11] Q. Based upon your professional training and experience do you have an opinion on the effect of passage of time on the foster family bond? A. Where it is good, it will be enhanced. Where it is bad, it will get worse.

Q. Can you give us any opinion at all on the period of time it takes for a significant foster family bond to be formed? A. I don't think time is as much a factor as the qualities of the people who are involved. I think they respond immediately in a situation that is a good and favor-

Dr. Marie Friedman—for Plaintiff, Foster Parents—Direct

able one. Most of the times it does take a little time because youngsters who have been traumatized will be a little guarded in a new situation.

Q. What do you mean by a little period of time? A. That is a little hard to say. I would certainly think that within a matter of a few months either they are going to make it or it is going to be a very guarded relationship.

Q. Based upon your professional training and experience, do you have an opinion on the importance to the child of continuity and stability? A. I spent my entire professional life and stake my career on going to bat for continuity for everything [12] for youngsters. Whether it is maintaining the same social worker, the therapist, whatever. That is one of the basics, continuity, as far as child development is concerned.

Judge Carter: What if the relationship is bad?

The Witness: To maintain continuity in a bad relationship, one would try to make the relationship good. If that couldn't be done, then a change would have to occur.

Q. Based upon your professional training and experience do you have an opinion on the effect on a foster child of movement from one good situation to another good situation? A. I think it is a basic tenet with children in child development that changes of any kind, unless they are absolutely essential, even if they are good changes, are bad for kids. Kids react badly moving with an intact family from one neighborhood to another, and changing schools and having to change friends. And that is pretty minimal in comparison to moving from a family, a whole total family situation to another total family situation, even if it were to be a good one.

Dr. Marie Friedman—for Plaintiff, Foster Parents—Direct

Q. What do you think the effect is on children moving from place to place, from home situations to home [13] situations? A. Are we talking about from good to bad or good to good? A. Perhaps you can answer that in two different ways. From good to good and from good to bad. A. I think I answered from good to good. I think change is essentially bad and requires a great deal of work and adjustment on the part of the child. Even if it is going from one good situation to another. To go from a bad situation to a good situation, I think everybody would be in favor of except that that also requires a lot of work to be done.

To go from one equally good situation to another equally good situation would have all of the earmarks of the evils of change as they affect children, and would serve no good purpose.

Q. How are the evils of change that you just mentioned likely to specifically affect children? A. The first thing that happens when a youngster is traumatized is that regression is the first thing that occurs and how far a youngster will regress will be dependent upon what degree of pathology existed at the time that another stress in the form of change was imposed upon him. And regression can go all the way into a psychosis, into [14] a paralyzing depression and it can stay there and be permanent.

Again, depending upon the degree of pathology already present.

Q. Do you have an opinion on the effect of moving a child from a foster home in which ties have been developed to a neutral foster home so as not to weaken the attachment to the biological mother? A. I think it is gross insanity. . . .

Q. Do you have an opinion on the damage that could be done by separation which is later found to be contrary

Dr. Marie Friedman—for Plaintiff, Foster Parents—Direct

to the child's best interest? Can such a separation be repaired, the damage of such a separation be repaired subsequent to the removal of the child? A. That if a child were moved and then it turned out that was a mistake?

Q. That is right. A. And then it could be corrected by putting the child back?

[15] Q. That is right. A. You need a pretty healthy kid in order to sustain that kind of a situation, because children who are foster children have been so traumatized by the initial abandonment of their natural parents that somewhere, some part of them is constantly searching for the idealized parent. When they get pretty close to an ideal and they are taken away, traumatized further, returned again, their faith and trust in the human beings playing chess with them becomes so impaired that their capacity for development becomes permanently impaired.

Q. You testified that many of the children with whom you work are children who have been or presently are in foster care.

Generally could you tell us what kind of experiences these children have had that have led up to their hospitalization and what kind of psychology problems they manifest? A. It is hard to put it together in general terms because children are individuals and quite specific.

Again let me preface this by saying the children who are here are only the children who have had the most trauma and the sickest and the ones who compensate as a result of their life experience. What I say doesn't [16] apply to all foster children, only, because there are many of them who make very successful lives living with their families and never come to a psychiatrist.

The kids that I see that have in common certain things, youngsters who have experienced enormous trauma by the very fact of abandonment and being in a foster care

Dr. Marie Friedman—for Plaintiff, Foster Parents—Direct

situation. One of the things that they all have in common is the sense of uncertainty that exists in their lives, even if it is a relatively good foster home situation. The social worker comes to visit and it is a reminder that this is only a temporary place.

There are all kinds of things going on that remind these children that this is not their permanent home and these are not their parents and this sense of uncertainty coupled with those circumstances where movement has to occur for whatever reasons, from one foster home to another prevents any real bonds from forming.

I think probably a typical case is the—maybe a little less than typical, is the youngster I have right now who has been moved around so much that even though the last foster home that he has been in, he has been in for four years, he has not been able to establish a human bond with a human being.

When he runs into trouble and he has difficulty, [17] he runs away to Queens Children's Hospital out at Creedmoor. That has become to him the nurturing object and this is what can happen to a youngster when they aren't able to be in stability in one home.

Q. Is this a child who was moved a number of times before his present placement? A. Yes.

Q. Do you have any familiarity or dealings with child care agencies who have children in foster care? A. Yes, I do.

Q. Do you have any experience with the decision-making processes in these agencies? A. I do, and I don't like to say it, but the fact is that this is an area of enormous distress to those of us dealing with psychiatric problems and child development problems.

Q. Could you tell us why? A. I really wish I knew the answer. I can only describe what goes on. There can be

Dr. Marie Friedman—for Plaintiff, Foster Parents—Direct

a dossier ten inches thick on a youngster. It can have information beyond what anyone needs to make any kind of a decision, and either it isn't read or it isn't understood, and all kinds of action goes on in terms of moving kids around inappropriately without regard to the already compiled information or to [18] recommendations that supposedly they come to us for.

There is a kind of—I am sure it is based on some good intentions, a sense of ownership as far as children are concerned. For a given agency, these are my kids and this is our agency, and there isn't an overlap to move into another agency if that particular agency doesn't have an appropriate facility.

It is kind of a jealous guardedness, what we can do, we can do better than anyone else, even though we don't have the right kind of a group home or the appropriate foster family.

The net result is the kids fall between the tracks.

• * •

[20] Judge Pollack: Doesn't every case have to depend upon the particular facts of that case?

The Witness: Beyond the generality, certainly I would hope that the specifics of each case would be dealt with.

• * •

[38] Judge Pollack: Suppose a fit parent is the ultimate object of foster care to arrange for an adoption or a return to a fit parent or some third alternative?

The Witness: The answer is very simply what is going to be best for the child. If a parent is ill and the illness looks to be a temporary one, temporary care for the child is what is to be desired,

Dr. Marie Friedman—for Plaintiff, Foster Parents—Cross

right? If a parent manifestly is unable to care for a child and if we know that beyond the manifest things that are there, psychologically, unconsciously the parent, although they may recover physically, will reject and abandon the child, [39] as a psychiatrist certainly my recommendation would be that foster care toward an objective of adoption would be what would be desired.

Cross examination by Mr. Hoffman:

Q. If in fact the natural parent has been found to be fit, whatever the temporary problem that she previously had has been dealt with, is—between the choice of continued foster care and returned to the parent, which is—
A. I would certainly think the answer would be return to the natural parent.

Q. Even if it were the case that some type of a bond had developed between the foster children and the foster parent, if the natural parent is fit and able and willing to care for the children, would it still not be in your professional opinion in their best interests to return to the natural parent? A. I just said yes.

• * •

[42] *Cross examination by Mrs. Gans:*

Q. What I am trying to establish is does the—assuming that a child has established an attachment with a foster parent, but has also had an attachment to its parent, does one have to cancel the other out? A. No. One doesn't cancel the other out. And I think characteristic of the problems that exist with not only foster care children, any child who has lost a parent early in life, is that there is

Dr. Marie Friedman—for Plaintiff, Foster Parents—Cross

a sort of universal search for the lost parent. Idealized though it may be, it goes on and on. Children can have very adequate adjustments to life with the absence of a parent, whether it is replaced by a foster parent or not, and continue to have that yearning, longing search for the original parent.

In the case of foster children, it is a very permanent thing around adolescence where they become runaways and look for their foster parent unless something has [43] happened that they have been able to see them and able to know them somehow and able to know what it is they are running to or not running to.

Q. As an example, if a child—let us say a seven-year old child enters foster care and has had a good nurturing relationship. It then develops a good relationship with a foster parent. It returns home after a year. Is the child capable of resuming the relationship with the original parent? A. There are so many vital things that are left out of these hypothetical cases. If a child leaves what had been previously an intact home with a loving and nurturing mother and leaves with a heavy heart, and plenty of hopes of going to be able to return and if in the course of a year—and I can't imagine an interested mother not being able to make some kind of contact with the child—

Q. Let's assume contact. A. The question is when am I coming home, just as soon as you can, et cetera. Then human being are very self-protective, they don't let themselves get hurt too much. Then the child obviously knows home is where the heart is and they are not going to make the kind of attachment, child-parent attachment in a temporary situation because they haven't broken the other one.

Florence Creech—for Children—Direct

[48] FLORENCE CREECH, called as a witness, having been first duly sworn, was examined and testified as follows:

Ms. Bittenwieser: Your Honors, my name is Helen L. Bittenwieser. I am the court-appointed attorney for the children.

Direct examination by Ms. Bittenwieser:

Q. Mrs. Creech, would you give us your present position and any facts in your present position or past experience which qualifies you as an expert in foster care?

A. I am the executive director of the Louise Wise Services, which is an agency helping children and parents. We have a foster home program. We place children for adoption. We have a maternity residence and a residence for mothers and babies.

I have had over 35 years of experience in the child care field, including all phases. Foster home placement, institutions, day care, adoption, services to unwed parents.

I have also served as a consultant for the Child Welfare League of America, which is the national standard-setting agency. Have served on their board. I [49] have served as their chairman of standards on child care.

Q. Mrs. Creech, in considering the return of children to their own homes or placement in another foster home, are all of the situations identical? A. Indeed not.

Can you tell the Court briefly some of the general types in different situations that exist, so they know what we are talking about? A. I would like to first say that I think we consider foster home placement, any kind of placement of children, we have to think in terms of permanent planning for children. Not think of foster home placement in itself.

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And that all that we are doing in placement must be geared to an ultimate permanent plan for a child.

I think there are many kinds of situations in which even though we do not want to move a child, it may be necessary. In fact I feel very keenly about not moving children from home to home, but we do have situation where a child may become free for adoption and the foster parents want to keep the child forever, but they really do not want adoption. An agency then must determine would it really be in the best interests of that child to remain in this particular foster home or should that child have the opportunity of being placed for adoption.

[50] I can think of other situations where the foster mother is very eager for adoption. The foster father is not. This is a case where the child is free and an agency would consider this particular family but there is a difference between the parents. Both parents feel—

Judge Lumbard: You used the expression "when a child is free." Would you explain just what you mean by that?

The Witness: I mean the child who either has been surrendered by the natural parents or where an agency has taken legal steps to terminate parental rights.

At our own agency we always first want to consider the foster family if a child can be placed for adoption, because we do not want to move the child. And in a great many instances the foster parents do adopt the child, but there are situations where it would not be in the child's best interests.

There are cases where the foster family has given very good physical care to the child, but where the agency feels that psychologically this would not be the best home for the child to grow up in.

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Then there are situations where the child is not free for adoption, but where there is consideration of the child returning to his own home or cases where it [51] might be felt the child should return to another foster—should be placed in another foster home.

You might have two cases where the facts appear to be the same, but yet they are completely different. For example, you can have a situation where a child has been in the same foster home for a few years. The natural parents become ready, have been rehabilitated, can take the child home, but where, after very careful consideration, the agency might feel that it would be best for the child if that child could remain in the foster home.

On the other hand, you can have the same set of facts where the agency might feel that it would be in the best interests of the child to be returned to the natural parents.

Then we have cases where we sometimes have had to move a child from a foster home where the parents, the natural parents want to have continued contact. Their plan is within a year or so to bring the children home and where we find that in spite of the agreement that the foster parents have signed, in spite of the understanding we have with them during the study that they will not participate in any visits, they are against visits with the natural parents, and where it may simply mean that we would have to move the child, or the kind of situation—

[52] Judge Lumbard: That you would have to do what?

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The Witness: That we might have to transfer the child to another home. We might have the kind of situation where the parent has to be out of the picture initially through no choice of his or her own. Maybe in the hospital, maybe in prison. And then he is out in the community. The foster parents may have become very attached to the foster child, which is what we want. We want them to love the child. Nevertheless, their own feelings will get in the way of the child reestablishing a relationship with the natural parents.

So that here again we might have to think in terms of moving the child to another home. But there are just no two situations the same, as I said in the one example I gave. You can have the facts that sound the same, but they are not. It does mean that an agency must exert every kind of caution, great skill, great sensitivity and be ready, as I certainly am, to always put the needs of the child above the needs of everybody else.

I do want to add here that at my own agency and I think many agencies, we, during the study of a foster home, before that home is licensed, we go into a great deal of detail about visits of the natural parents, the [53] respective roles. This is written out in an agreement which is signed. We also give our foster parents a statement on their legal rights as foster parents, letting them know what recourse they have if there should be differences.

Judge Carter: May I interrupt and ask a question.

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Mrs. Creech, am I correct in understanding when you are saying a permanent plan, when you get a child, based on the circumstances and so forth, you will determine or seek to determine whether that child is going to be temporary foster care and returned to the parent, or whether this is a child that will eventually be better off for adoption, is that what you mean by a permanent plan?

The Witness: I mean when any child comes into care, it should never be with the thought of the child remaining in foster care permanently. There really isn't any such thing unless it is adoption, so that I feel it must be working toward returning the child to his own home and if this is not possible after every effort has been made to help the family establish a home, then take steps in terminating parental rights.

Q. When you do decide to move a child from a foster home, can you tell the Court what the procedures are, particularly in relation to the foster family and to the [54] child? A. This is always a very slow process, depending, of course, on the age of the child. Even a small child who speaks, a toddler, will be very much involved. The foster parents will know what we are planning, unless there should be a sudden emergency that is beyond our control, but when this is something we are planning, the foster parents would know, the natural parents would know, the child is told, we never just take a child and just move that child.

It is done slowly, with the child having the opportunity of getting acquainted with the people where he is going, and I am putting it that way because where he is going

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might be back to his own family, might be to an adoptive home, might be to another foster home. But it would be a slow process, with the new adults becoming acquainted with the child, with the child visiting in the home, perhaps for an overnight visit. How much contact there would be, how slow it would be would depend on the age of the child, where the child is psychologically, what is best for him.

In many cases we not only make these decisions with the skill of our social work staff, but we have the help of one of our child psychiatrists, one of our consultants [55] who will help us in planning.

Q. When you find a foster home for future placement of a child in that home, is the agreement with the foster family that this is a foster placement for the child to be returned home, if the child is to be returned home, made explicit? A. It is made very explicit. We very carefully differentiate between adoption and foster care and our foster families know that the child is coming to live with them until another—a permanent plan can be made. The length of time we generally cannot spell out.

Q. Once you have decided to move a child and have taken the steps, is in your opinion, it detrimental to the child for undue delay? A. It is, indeed. It would be, it could be very harmful.

Q. In a procedure to review the acts of the child care and the agency by the Department of Social Services or any other body would, in your opinion, it be more effective for there to be an adversary proceeding or would it be helpful to the body that is hearing it, the hearing officer to hear all of the thinking that went into the question of the necessity for moving the child? A. Before I attempt to answer that, I just want to [56] say when I outlined what our procedure is in moving a child, I failed

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to include the fact that we must, in accordance with the policy and procedure of the Department of Social Services, and the very large majority of the children under our care in the custody of the Commissioner, and we must send the family what they refer to as the 10-day letter, which spells out the plan to move the child, which also indicates in the letter, it gives the name, the phone number of the person at the public agency whom they can call if they have any question.

The foster parents are asked to sign this letter if they do not have any question, so that it is clearly understood that this is agreed to and, as I mentioned before, Mrs. Bittenwieser, in our statement to the parents of their legal rights, we indicate also their request to the State Department of Social Services so that actually built into the whole procedure there is the possibility of review.

I think that adding anything beyond this which could delay a transfer when it is in the interests of the child, would simply have an adverse effect.

Judge Pollack: Mrs. Creech, one of the points that is made here is that in sending out the 10-day notice, you don't express or specify the reasons for the removal. Are those reasons available to any inquiring foster parent before [57] he gets to the 10-day conference?

The Witness: At our agency, this is certainly discussed with them and before they get to that conference our foster parents all know that if they have any question about what they have discussed with their social workers, they can call me and come in and talk with me or with our associate director.

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Judge Pollack: So they don't go into that conference blind. They are in a position to know exactly what your reasons are?

The Witness: Right. They may not agree with the reasons, but they know what the reasons are.

• • •

[59] Q. Mrs. Creech, are the wishes of the children, if they are old enough to be able to indicate their wishes, taken into consideration in reaching a final plan? A. They are indeed.

Q. What criteria do you use for determining whether to remove the child from a home? A. That is difficult to answer because it depends so on each individual case, and I could not use the same set of criteria for any two cases, but I start first of all with a wish to not move a child unless it really is necessary, and weigh everything in accordance with that factor. In other words, there might be certain situations where we might feel that another plan would be better for the child, and yet where we also feel that removal might be so traumatic that we should not move. In other words, it really comes down to the needs of the child, the age of the child, where the child is in relationship to all of the adults in his horizon. What the child's psychological needs are, what movement will mean to a child. In other words, I really cannot say, here is a list that we use. It is much too individual.

• * •

[60] *Cross examination by Ms. Lowry:*

Q. Do you think your agency is outstanding with [61] respect to its practices? A. I appreciate Miss Lowry's

Florence Creech—for Children—Cross

comments. I hope it is outstanding, but I do not agree that we are in such a minority as far as working toward permanent planning for children. I think there are a great many agencies. Perhaps we do a little more, perhaps we have given leadership in that direction, but I think that there is great movement on the part of many, many agencies in permanent planning for children.

* * *

Q. Mrs. Creech, are you aware of a 1971 study that was called Children in Foster Care Who May Need Adoptive Planning that was conducted by the Department of Social Services, Office of Research, which showed that something like a third of all of the children in New York City foster care have been in foster care for over four years despite the fact that they have not been freed for adoption nor had any contact with their parents? A. I am familiar with that, but that was 1971. Since then the 24 month review has come into effect. I think [62] that this review has indeed mobilized a good deal in the field. I am not going to defend agencies by saying I think they should have had legislation for this. I agree in the past not enough was done, but I do not feel that in 1975 we would find the same picture. I think that the public agency, the court and agencies themselves have been moving much more in the direction of permanent planning and I am putting it that way because I think it is all wrong to talk about adoption as the only plan.

On the contrary, I think that not enough has been done in the past and much more should be done in working with families toward returning children to their families so that I keep stressing permanent planning and not adoption.

* * *

Florence Creech—for Children—Cross

[63] Q. Mrs. Creech, are you aware that there are many agencies in New York City that have child care population over 1,000 and 2,000 children, do you know that for a fact yourself? A. Yes.

Q. Mrs. Creech, can you tell us whether or not your agency has any written standards with regard to when a child will be taken out of a foster care home? A. No, we do not have that in writing.

Q. You testified that when the child is to be taken from a foster care home and the foster parent does not sign a waiver, your agency sends it what you call the ten-day letter? A. No. When we are going to move a child, a family always gets a ten-day letter and they then will decide whether they will sign it or not sign it and if they do not wish to sign it, agreeing to it, and indicating that they do want to contact the public officials on this. Then we would postpone taking steps to give them an opportunity of doing so, but everybody has to get the letter.

Q. You testified that the letter contains the reasons on which you are basing your decision—[64] A. I did not say that.

Q. Can you tell me, please, what the letter contains? A. I have a copy of it way in the back that I brought with me if the Court would want to see it.

Q. I don't think we need that.

With regard to the planning parts of the letter, we don't need to see the form you use, but is there a place on the letter for reason for planned removal? A. It is not in the letter. As I explained before, this is handled personally by the social worker.

Q. So the foster parent receives nothing in writing telling the foster parent the reason for the child's removal from the foster home? A. No.

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Q. Is that correct A. Generally not. Generally it would be in discussion.

Q. You also testified that your social workers discuss the question of removal with the foster parent ahead of time. A. Yes.

Q. Do your social workers as a matter of practice discuss with the foster parents everything in the file that has led up to the decision to remove the foster child? A. I would say that they certainly discuss everything [65] that is pertinent to the planning for the child. And it would not be just at that point.

In other words, if we are working toward a plan of returning a child to a family, this is being discussed right along and in fact the foster parents would really be participating by the regular visits which generally when we are really—when we are actually making specific plans for return and are working toward a definite date, generally the parents would visit in the foster parent's home so that the foster parents are very much a part of this.

Q. Does the foster parent have access to the agency file? A. No.

Q. May the foster parent read it? A. No.

Q. If they ask to see a specific document in the file and the social worker does not want to give it to them, does the foster parent have a right to see the specific document? A. What document?

Q. If there is, for example, a psychological evaluation of the child in your file. A. It might be show[n] to them. They are always told about it. In fact, when our psychologist sees the child, she also, after examining the child, always talks directly with [66] the foster parent. So that this is not a secret. The foster parent would know the content.

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Q. But is it in your worker's discretion to withhold or to share certain information; is that correct? A. I don't think in terms of withholding. I can't think of any instance, frankly, where a foster parent has asked for information specifically about a child, either about the psychological or psychiatric, that we have withheld because likewise, if one of our child psychiatrists see the child, the psychiatrist would also talk with the foster parent afterward.

Q. With regard to other information in the file or with regard to the general content of the file, would you say it is in the social worker's discretion whether to share specific items in the file with the foster parents? A. We do not share the file, as I said. We do not show the file. That's a different question and a specific document which I answered.

Q. Might there be some circumstances that would lead you to believe that it was necessary to remove a child from a foster home which you would not want to communicate to the foster parents? A. There might be. Generally not. I certainly could not say that there never would be.

[67] Q. In a situation in which your plan is to at some point return the child to the natural family and the foster parent has in your estimation become too attached to the child, would it be a possibility that your agency would move the child to a neutral foster home to facilitate the child home? A. We might have to, but we certainly would not do so without making every effort first of helping the foster parents to work this out, to recognize with them how attached they have become, but to help them to accept what the planning is and to make it possible for the child to remain, but if he could not, in other words, as I cited a situation, we have had such a case where the foster par-

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ents just absolutely refused any visits of the natural parents and no matter what we did we could not work it out, so we were left with no choice but that would rarely happen.

Generally we would be able to help the foster parents to understand and from my long experience with foster parents, the large majority want what's best for the child. Even though it may be difficult for them and they want a permanent plan for the child and will move in that direction.

Q. Mrs. Creech, do you think that reasonable social work professionals could ever disagree about what is best for a child? A. Yes.

• • •

[69] Q. I have one final question.

Mrs. Creech, have you ever had situation in your agency in which natural parents have sought to have a child returned to them and your agency has felt it was not best to have the child returned? [70] A. Yes.

• • •

[74] Q. When a ten-day letter is prepared for a child, [75] could you explain to the Court exactly what the process is from the time the decision is made by the agency to move the child until the child is removed, in fact removed from the foster home? A. Prior to the ten-day letter there has been discussion way before that with the foster parents, the natural parents, with the child, if old enough, and the foster parents know that they will get the ten-day letter. In fact, they know about the existence of it and have seen a copy of it at the way back earlier when they received a statement from us about their legal rights.

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They see a form of that and they are told by the social worker that they will be getting this letter, which they are all prepared for and they also know that they may sign it or not sign it. And the large majority, I think at all agencies, do sign it and the foster parents then participate in what the steps will be, but we don't wait until that ten days. The ten days is only setting the date for the final placement, but the transfer is taking place over a much longer period than that.

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[76] Q. You spoke about something called a 24-month review. Can you describe to the Court what that is?

• • •

[77] Q. Is the foster parent in whose home the child resides at the time the petition is filed notified of the pendency of this proceeding?

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A. They are not notified by the court, but they are notified by our agency and they may participate if they wish to.

• • •

[79] In other words, we look at each case individually and determine whether it would be in everybody's interest, mainly the child's interest or not for the foster parent to be there.

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[82] Ms. Gans: I am Louise Gans, attorney for Intervenor-Defendants.

*Florence Creech—for Children—Cross**By Ms. Gans:*

Q. Mrs. Creech, you testified earlier that ordinarily before a child is returned home there would be stepped up visiting; is that correct? A. Yes.

Q. I want to ask you whether in your experience ordinarily a child that goes home is a child that has had regular contact with its family?

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[83] I would say generally there are regular visits when there is a definite plan toward reuniting the child with the family.

Q. • • • where for some reason there had not been visiting, you would then arrange a period of visiting before the child would be returned home? A. Yes.

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Q. Would it be a typical social work decision in your experience for a child to go home without there having been [84] a period of visiting? A. No. That would be atypical.

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[91] JANE EDWARDS, called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination by Ms. Battenwieser:

Q. What is your position? A. I am the executive director of Spence Chapin Services to Families and Children.

Q. Spence Chapin was originally known as an adoption

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agency. Are they now involved in foster care as well as in [92] adoption? A. Yes. We started out as an adoption agency primarily, but for the last 15 or 20 years we have been a foster care agency and an agency that provides services to families who are not connected with adoption or foster care. A. Is the Harlem Dowling Agency still a part of your agency or separated? A. Yes, it's still part of Spence-Chapin. It's not autonomous as yet, although working towards that end.

Q. You are the director of that agency as well? A. I am.

Q. In order not to waste the Court's time, I will not repeat many of the questions that were asked, but I do want to know if in removing children from foster homes, are you able to work out any set criteria for the removal of children? A. No, I think that it operates pretty much the same as the former witness stated, that so many situations are different and that consideration of the best interests of the child, while that might be paramount, there are other considerations in relation to adoption and the return of children to natural parents that we have to consider.

Q. You have heard the former witness, Mrs. Creech. [93] Is the procedure in your agency the same as she described and if not, will you tell us what the differences are? A. Without having to recall exactly what she said, we do send out—we do have a ten-day notice. We never send it out. We take it out. We either invite the foster family in to hear the reasons for the removal of the child or replacement of the child or we visit the home and take the notice with us there.

Q. Do you consult the child if the child is old enough? A. Yes.

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Jane Edwards—for Children—Cross

[94] *Cross Examination by Ms. Lowry:*

Q. Mrs. Edwards, where do most of the children go who leave a particular foster home who do not go back to the natural parents? A. Most of the children are placed in adoption.

Q. Most of the children placed in care with your agency are either going back to their natural parents or are going to be free for adoption; is that correct? A. That is correct.

Q. To your knowledge, is this situation typical of the situations in other child care agencies in New York City? A. I don't know.

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[95] Q. In the ten-day letter that your agency writes out to the foster parent, can you give us any examples of what is filled in on the blank space provided for the reason why the child is being removed? A. It's stated, return to the mother or placed in adoption. If there is any other reason that has to do with the problem in the foster home, that isn't stated there. We talk to the foster parents about that.

Q. That wouldn't be written out in the letter? A. No.

Q. Do your foster parents who are questioning a decision made by your agency to remove the child, do they have access to your agency records? A. No, they don't.

Q. Does your agency have any written standards with regard to removal of children from foster homes, any guidelines in writing? A. No, we don't have any guidelines as such, but we—in our foster care philosophy and practices statement that every case worker and staff member has, general procedures are stated, such as if you have any questions about how a child is doing in his home,

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the procedure would be to talk [96] with the foster parents about it, talk with your supervisor about it, and the supervisor then talks to her superior and the decisions are made by the administrative staff. Never a decision by one person. And then it's shared, the reasons are shared with the foster parents.

Q. Miss Edwards, are there any situations in which a child who is free for adoption has formed a bond with the foster parents and the foster parents do not want to adopt the child? A. Yes, unfortunately we have many such situations like that.

Q. What are your guidelines with regard to handling such a situation? A. We have had some success when we continually talk with the foster parents about adoption. We point out to them the value it would have for the child. And sometimes the child himself even asks the foster parents to adopt.

We bring the foster parents into meetings with other foster parents who have adopted, so they can tell them about the experience. We bring in officials from the State and from the City to help with any questions they may have about the subsidy, whether it will last or not. We talk with them about the psychological effects of having a child in the home who is free for adoption and would have to be [97] removed to another home for adoption if he has been there a long time and wants to stay there and everything is fine in that home. • • •

• • •

Q. Do you ever remove a child from a specific foster home without a specific order from a 392 hearing? A. You mean to return to the natural mother?

Q. Either to return to the natural parent or to move elsewhere. [98] A. We rarely wait for the 24-month re-

Jane Edwards—for Children—Cross

view if in our opinion the best interests of the child dictate us to move the child from the home, either for adoption or return.

Q. When a natural parent asks for a child back, does your agency always give the child back? A. No, not always.

Q. Are there any circumstances in which you think the child's interests differ from the natural parents' interests? A. Yes. We have situations where we think that the natural parent has an interest in the child, has maybe shown an interest in the child in visiting, but that based on opinions from other disciplines, who is emotionally able to care for that child and it's in his best interests to remain where he is or to be placed elsewhere.

And if we feel that way, then we go to the court to free the child or to make an effort to free the child for adoption.

Q. Are you able to form an opinion with regard to in general the nature of foster family relationships?

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A. We have a very positive opinion about foster [99] family relationships. We work very hard to make those relationship[s] very close so that the child will have, while he is in the foster home, good care and close care and if it's necessary for the child to remain in the home for a long period of time, then his best interests would be served.

Also if it's not possible for him to be returned to his natural parent or placed in an adoptive home outside of the foster home, working in a family centered way with the foster parents and bringing—helping to bring about a close relationship, benefits the child in maintaining a home for him that will be a personal one.

Jane Edwards—for Children—Cross

Q. Have social workers assigned to your agency ever disagreed with regard to what might be best for a particular child? A. Yes.

Ms. Lowry: Thank you.

Judge Lumbard: How many children do you have under your supervision?

The Witness: We have 1,300 children.

Judge Lumbard: That would make you one of the largest agencies?

The Witness: Yes, it does.

• • •

[101] A. Foster care is a temporary plan for a child to act in substitution for his natural family until his natural family is ready to take him back and able to take him back or until he is freed to be placed in adoption and thereafter it is the obligation of the agency to continue to try to find a permanent adoptive home for him if that is in his best [102] interests.

However, as I said before, when he gets to be 12 or 13, and this is the only home for him, then the best interests of the child then have to be taken into consideration.

For some children it might be adoption outside the home. For many of them it is not. And that's where—it's not really foster care after that. It's a permanent foster home different from a temporary one.

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[105] *Cross examination by Mr. Hoffman:*

Q. • • • once you have a natural parent in the picture, it's the fitness of that parent, the ability of that parent

Jane Edwards—for Children—Cross

as opposed to whatever is happening in the foster family that's the determining factor as to whether the child goes back? A. Not by itself. That's not the way you stated it at first. That's not the only factor that's taken into consideration, whether the mother is fit or not.

[106] Does she want the child? And how often has—how has she demonstrated wanting the child, being able to care for the child, though she may be perfectly fit herself in managing her own life and how will she be as a parent? What dangers may we be subjecting the child to, which has nothing to do with the quality of care he has had in the other place, because if he hasn't had, for example, good quality care in the foster home where he is, * * *

Q. The decision to return the child to a natural parent, is that a carefully arrived at decision? A. Very carefully.

[107] Q. Sometimes it takes a period of months before the decision is actually made? A. Sometimes it does, yes.

Q. Sometimes it takes even a longer period of time? A. Sometimes it takes years.

* * *

Cross examination by Ms. Gans:

[109] Q. * * * after the 24-month review, if the court gives you an order to free the child for adoption, you feel bound by that? A. Yes.

Q. Or if the court gives you an order to return the [110] child? A. Yes.

Q. Or if the court gives you an order to keep the child in its current foster home, you feel bound by that? A. Yes. And if we disagree, we go back to the court to ask for a change in the disposition.

* * *

Jane Edwards—for Children—Cross

[123] Q. Do you feel that subjecting natural parents to an adversary hearing or an attack by them in an adversary hearing prior to the return to them of their children might deter some of them or weaken their resolve to get their children back? A. No.

* * *

CHRISTIANE GOLDBERG, called as a witness, being first duly sworn, testified as follows:

* * *

[124] *Direct examination by Mr. Bienstock:*

* * *

Mrs. Goldberg, do you live in New York City? A. Yes.

Q. You live in Brooklyn, don't you? A. Yes.

Q. Are you and your husband Ralph Goldberg plaintiffs in this action? A. Yes.

Q. Are you and your husband foster parents? A. Yes, we are.

Q. Since when have you and your husband been foster parents? A. We have been foster parents for five and a half years.

Q. Under what agency are you authorized— A. Under the Bureau of Child Welfare.

Q. That is a City agency? A. Right.

[125] Q. Do you have any children of your own? A. Yes, a daughter.

Q. One daughter? A. Yes.

Q. And her age? A. She is nine.

Christiane Goldberg—for Plaintiff, Foster Parents—Direct

Q. Could you tell the Court why you and your husband became foster parents?

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A. Because we like kids. Because we like a big family and because there was a need for foster parents.

Q. Do you and your husband have a foster child now?

A. Yes, we do.

Q. Is that— A. That is Rafael.

Q. How old is he? A. He is twelve.

Q. How long has he been your foster child. A. He has been with us for five and a half years.

Q. Could you relate to the Court under what circumstances Rafael became your foster child? A. It was supposed to be an emergency placement. [126] He came to us on an emergency basis because his foster mother needed to take a vacation and she would not take him along and they needed a place for him for two weeks until she would come back.

• • •

A. He had been described to us as mentally retarded, hyperactive, brain-damaged and emotionally disturbed. The other thing we knew that he had a lot of tantrums.

Q. He had a lot of what? A. Tantrums and that's about all.

Q. Can you describe Rafael's behavior during the first several years he was in your home as your foster child?

A. He did have a lot of tantrums. He was very active. He could not be left alone for even one minute from the time he woke up until the time he went to sleep. He would wake up around five o'clock in the morning. He could not play a game with other kids, he could not play cards or

Christiane Goldberg—for Plaintiff, Foster Parents—Direct

be occupied with toys, he didn't know what to do with cars [127] except bang them and crash them. He had tantrums every time we asked him something.

The only thing he really knew how to do was to fight.

He had two fears. One of them was that when he wakes up the next morning I would be dead because my husband would have killed me with a knife, and the other fear was that he would be taken away. The first fear, we talked about it and after that he woke up a little later in the morning and that made it easier for us.

The second fear, we had to deal with it. We had to tell him that we would not send him away.

Q. Mrs. Goldberg, can you describe Rafael's behavior over the last several months up until the present time?

A. Well, he is much better. In the beginning we used to have to sit with him and do home work with him every evening from 4:30 until 7:00. Now he is able to do that almost by himself. He, for the past few months, started to have a few friends. Those are still loose friendships but it is still kids he can relate to, and that he can play with and he doesn't have that many fights any more, and he is able to play. He is a good athlete. He knows how to swim and he is on hockey and baseball and football teams, and that kind of thing.

[128] Now he begins to feel that he can do things and that things are worth trying because maybe he will succeed, which is something that he didn't do before.

Q. Mrs. Goldberg, do you and your husband receive money for Rafael's care from the Bureau of Child Welfare? A. Yes.

Q. Do you and your husband also spend money of your own for Rafael? A. We don't keep different accounts for different members of the family. We don't keep track of we spend this for this—this much for this one and this

Christiane Goldberg—for Plaintiff, Foster Parents—Direct

much for that one. If everybody goes some place, then it is paid for everybody and if somebody needs something, then he gets it.

And when he needed a special school, we put him in the Montessori School.

Q. And the BCW reimbursement did not cover the cost of the Montessori School?

• • •

A. We put him in the Montessori School. We paid for the tuition. We paid on time as the school wanted us to pay and we got reimbursed for some of it.

Q. Did your family take Rafael with you on family [129] visits and on family trips? A. Yes.

Q. Is Rafael treated in sum as an equal member of your family? A. He certainly is.

Q. Mrs. Goldberg, are you a member of any foster parent organization? A. Yes.

Q. Are you an officer in a foster parent organization? A. Yes, I am.

Q. Do you know of foster children who have been removed from their foster families without written notice to those families? A. Yes, I do.

Q. Approximately how many in your knowledge? A. I would say I know about ten or twelve cases.

Q. Over what period of time? A. Over maybe a year or a year and a half.

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[130] Q. Have you or your husband ever received written notice that the Bureau of Child Welfare is planning to remove Rafael from your home? A. No.

Q. You have not? A. Not written.

Christiane Goldberg—for Plaintiff, Foster Parents—Direct

Q. Are you concerned that the Bureau of Child Welfare might remove Rafael from your home? A. Definitely. It is like a sword hanging over our heads.

• • •

Judge Pollack: Why are you concerned? What is it that they have done that leads you to believe that they have any intent to remove the child?

The Witness: The worker has spoken about it.

Judge Pollack: What has she said and why? What reason has she given?

[131] The Witness: We never received any reason.

Judge Pollack: Did you ask for a reason?

The Witness: We never got any.

Judge Pollack: You didn't ask for one either, did you?

The Witness: I think we did.

Judge Pollack: What did the worker tell you as to the possibilities of removing the child, for what reason? Was it because of the child's health?

The Witness: We got a letter from one of the supervisors saying we were doing a wonderful job.

Judge Pollack: What occasion was there to notify you that the child might some time be removed? Who said something?

The Witness: Every worker had essentially a different plan. Every time we change workers, they had a different opinion. Even the last worker first said he wasn't going to move him and then he said he was.

Judge Pollack: You got no reasons for it, is that it?

Chistiane Goldberg—for Plaintiff, Foster Parents—Cross

The Witness: Right.

Judge Pollack: And nobody has taken any steps to remove your child, have they?

The Witness: Well, we objected.

[132] Judge Pollack: And that ended it?

The Witness: I don't know what the worker has in mind.

Cross-examination by Mr. Hoffman:

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[134] Q. Talking about the last year or so, this particular controversy, when were you first informed that Rafael would be taken out? I don't mean going back five years ago, four years ago when it might have been discussed as a possibility. Were you actually informed that they are about to take him out within the last year or so? A. When he told that to the Judge at the 392 hearing.

Q. The 392 hearing they told the Judge that they [135] might be taking Rafael out.

Q. Do you plan to adopt Rafael? A. We have a commitment to him and to the agency that we want to keep him and raise him. We made that very clear to each one of the workers. We had to make that clear to Rafael from the beginning because it was a crying need of Rafael. He was constantly asking, are you going to throw me out, are you going to call the worker, and we had to reassure him constantly that no, we were not going to take him out, throw him out, that we were going to keep him.

Q. Is Rafael, to your knowledge, free for adoption? A. Not to my knowledge.

Q. If Rafael were free for adoption, would you be willing to adopt him? A. He is not free yet.

Chistiane Goldberg—for Plaintiff, Foster Parents—Cross

Q. I said if Rafael were free for adoption. A. I don't know. He has his own identity. We wish to respect his identity, his past, his sense of belonging to where he comes from.

[136] Q. So if the agency were to undertake to free Rafael for adoption, assuming for the minute that he isn't free, would you be willing to assist the agency— A. No, I don't think he should be cut off from his original family.

• • •

[140] Judge Pollack: When was the 392 hearing held, what month?

The Witness: April or something.

Judge Pollack: April of 1974?

The Witness: Yes.

[141] Q. Were you present at the 392 hearing? A. Yes.

Q. And were you permitted to speak and offer what position you wanted to offer? A. Yes.

Q. And were you apprised prior to the 392 hearing that such a hearing would be held? A. Were we apprised that there would be a hearing?

Q. That's right. A. Yes.

Q. Was there a disposition made by the judge, if you know, at the 392 hearing? A. He said foster care continue.

Q. Was there any other provision of that order? A. He said that visits should be set up if the child wanted it.

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Dorothy Lhotan—for Plaintiff, Foster Parents—Direct

[144] DOROTHY LHOTAN, called as a witness, being first duly sworn, testified as follows:

[145] *Direct examination by Ms. Lowry:*

Q. Where do you live, Mrs. Lhotan? A. Hicksville, Long Island.

Q. Are you a plaintiff in this lawsuit? A. Yes, I am.

Q. Are you a foster parent? A. Yes, I am.

Q. How long have you been a foster parent? A. Fourteen years.

Q. For which agency have you been a foster parent? A. Social Services of Long Island.

Q. Is that the Nassau County Social Services? A. Nassau County.

Q. Do you have any children of your own? A. Yes, I have.

Q. How many children do you have? A. I have three.

Q. How old are they and what do they do? A. I have a student 17. I have another son that's 27 and I have on that's 30.

Q. What do your children do, the ones who are not students? [146] A. They are police officers.

Q. Why did you and your husband become foster parents? A. Because we love children very much.

Q. Do you presently have any foster children in your home? A. Yes, I have.

Q. What are their names? A. Cindy, Cathy, Cheryl and Patty.

Q. How old are they? A. Eight, nine, eleven and twelve.

Q. When did the girls come to live with you as foster children? A. Cheryl and Patty came 1970, September. Cindy and Cathy came to my house September 1972.

Dorothy Lhotan—for Plaintiff, Foster Parents—Direct

Q. Do you have any other foster children in your home?

A. At the present time?

Q. At the present time. A. No, I have the four.

Q. How many other foster children have you had before the Wallace children? A. Six.

Q. How long did each of them stay with you? [147]

A. One, two and three years.

Q. Where did each of them go when they left your home? A. Back to their parents.

Q. Each of them went back to their parents. A. Yes.

Q. Did you ever express any objections about any of these children leaving your home? A. No, I didn't.

• • •

Q. Why didn't you express any objections about these children leaving your home? A. Because they went back very happy.

Q. Do you receive money for taking care of the Wallace girls? A. Yes, I do.

Q. Do you spend any of your own money on their care? A. Definitely.

Q. Do the girls participate in family activities? [148] A. Yes, they do.

• • •

Q. To what extent do they participate in family activities? A. We go to church together. We get together as other families. We go on vacations together. They do very well in school.

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Dorothy Lhotan—for Plaintiff, Foster Parents—Direct

Q. During the time the children have been in your home, have you had any contact with the workers from the Nassau Department of Social Services? A. Yes, I did.

Q. Approximately how many workers if you know, have you had contact with from the Nassau Department? A. Three.

• • •

[149] Q. Have any of these workers who have had contact with you complain to you about how the girls were doing in your home prior to June of 1974? A. No.

Q. In June of 1974, were you asked to go to the Childrens Bureau? A. I did.

Q. For what reason? A. The supervisor, Mrs. Mays, had called me on the phone and she didn't tell me for what reason.

Q. What happened when you went there? A. When I got there, she had given me a paper to sign which I had objected and she also had said that they are going to be removed from the home July 9th and if they don't want to come with us, we are going to drag them out.

Q. Was that the first time, Mrs. Lhotan, that you heard about any plans to take the children out of your home? [150] A. Yes.

Q. Were you told the reason at that time? A. Because we loved them too much. They loved us too much.

• • •

Q. Yes. At the time you had the conversation with Mrs. Mays, you testified she gave you a paper to sign, were you told by Mrs. Mays that you had any right to object to the girls being taken from your home? A. No.

Dorothy Lhotan—for Plaintiff, Foster Parents—Direct

Q. And she gave you a paper to sign? A. Yes, she did.

Q. Did you sign the paper at that time? A. No, I didn't.

Q. What happened after the meeting? A. After the meeting we had come home very upset about the whole issue and June the 28th we had gone to church as a family and I had met the priest and the priest had given me a telephone number of Flora.

• • •

A. And she had recommended me to Marcia.

[151] Q. Mrs. Lhotan, you have had foster children before. Why are you objecting in this instance to having the children removed?

• • •

A. Because there was never—if there were just a few visitings. The mother never came to visit these children. She had called me up a year ago, two years ago on the phone stating, wanting to talk to the children.

At the time the children weren't there, they were in the park. I had asked her, call back at 6:00, dinnertime. I'll make sure they are there. She says, all right.

I had kept the children indoors, I wouldn't let them out thinking she was going to call. She never called.

I haven't heard and I haven't seen the mother since then.

Q. Mrs. Lhotan, to your knowledge have any of the girls been asked by the workers at the Nassau Children's [152] Bureau how they feel about leaving your home? A. No.

• • •

[157] Q. Could you tell us what Mrs. Mays said to you exactly when you went in there? A. She had told me that she had already discussed it with the staff, that even if

Dorothy Lhotan—for Plaintiff, Foster Parents—Cross
Cheryl Lhotan—for Plaintiff, Foster Parents—Direct

we didn't sign, the children would still be dragged out of our home and I had asked them how many are coming for the children and they said, one won't be enough. There has to be a few of them coming.

My husband asked them, how many cars. She had stated two cars. There wouldn't be enough with one car.

[161] *Examination by Ms. Gans:*

Q. Mrs. Lhotan, * * * Isn't it true that there was a foster care review proceeding concerning the Wallace girls in 1972? A. Could you explain that a little more clear.

Q. Did you go to Family Court after you had the two older girls for two years, was there a hearing in Family Court? A. Yes.

Q. And you were there? A. Yes.

* * *

[162] Q. * * * the hearing was about all the six children at the time? A. Yes.

* * *

[164] CHERYL LHOTAN, called as a witness, being first duly sworn, testified as follows:

* * *

[165] *Direct Examination by Ms. Lowry:*

Q. Cheryl, tell the Court how old you are? A. Twelve.

Q. Cheryl, do you understand what it means to [166] tell the truth? A. Yes.

Q. Do you understand you are under oath now and you have to tell the truth? A. Yes.

Cheryl Lhotan—for Plaintiff, Foster Parents—Direct

Q. Do you know why you are here now, Cheryl? A. Yes.

Q. Do you know that the Nassau Childrens Bureau wants you and your sisters to leave your foster home, is that right? A. Yes.

Q. Has anyone from the Childrens Bureau asked you whether you want to leave? A. No.

Q. Has anyone asked your sisters, if you know? A. No.

Q. Do you have an opinion about whether you want to leave or not?

* * *

[167] A. Yes.

Q. Do you want anybody to ask you? A. Yes.

Q. Why is that? A. Because we were supposed to be taken away from our foster parents without any say.

Q. Do you consider it important to have a say in whether you go or not? A. Yes, I do.

* * *

Ms. Gans: Your Honor, I would like to call Naomi Rodriguez.

Mr. Bienstock: Your Honor, at this time the plaintiffs would like to make an objection to what I believe is going to be an across the board objection to each of the witnesses offered by Mrs. Gans. * * *

[169] We wanted to show to the Court the following, which is related to our view of the foster care system as a whole. When a parent voluntarily, and we are talking about voluntary foster care. When a parent voluntarily places her child in foster care, she signs a form which authorizes the Commissioner of Social Services, a public [170] official,

Colloquy

to care for her children. She does not authorize any private individual to care for her foster children.

• • •

We want to show what the significance of one year is in terms of a mother who has a child in foster care [171] because it is our position that since she has never been told that she must get her child out of foster care in one year or else, that in fact the change in rights and expectations would be penalizing the parent, who sees her child and wants her back, for delays and processes which are beyond her control, so we wanted to show the Court through two witnesses how it is possible to have a child in foster care for a year without there meaning or signifying in any way any kind of abandonment.

• • •

[172] Ms. Gans: I do think it is in dispute. The consequence of conferring on foster parents the kinds of rights which they seek, it is not a question of the [173] hearing alone. They are asking for recognition to status as parent—

Judge Pollack: That's a matter of law, isn't it, and the philosophy of the state.

Ms. Gans: According to plaintiff it is a matter of psychiatric evidence.

Judge Carter: You can't establish anything like that by the natural parents, can you?

• • •

Naiomi Rodriguez—for Intervenor Defendants—Direct

[175] Ms. Gans: I also have a witness who had a child in foster care and the child has been returned to her and I wanted her to testify about her experience with foster care and about the reuniting of a family.

Judge Pollack: How does that prove that there has been or has not been due process? This is a federal court convened to determine whether or not a statute gives due process and equal protection of the laws and you are going to have a lady say, I had a child in foster care and she was returned to me.

Ms. Gans: But the preliminary inquiry, as I understand it, is is there a constitutional right or protected interest that—as hard as I have tried, that [176] inquiry involves questions of policy. It involves questions of how does the foster care system work.

• • •

[NAIOMI RODRIGUEZ]

[179] *Direct Examination by Ms. Gans:*

Q. Mrs. Rodriguez, are you the mother of a child Edwin Rodriguez? A. Yes.

Q. Did you place Edwin in foster care in March 1973? A. Yes.

Q. Did you do it by signing a form? A. I did it by signing a form.

Q. Was the form read to you? A. Yes, it was.

Q. Did you mark— A. Yes.

Q. How did you mark your name? A. I don't mark my name. I do an X. I make an X.

• • •

Naomi Rodriguez—for Intervenor Defendants—Direct

Judge Lombard: Everybody agrees this is the form executed by the witness.

Q. Mrs. Rodriguez, did you ever have any hearing concerning your children after you placed them in foster [180] care? A. No.

• • •

Q. You placed your child in foster care in March 1973. What agency is your child with? A. The Harlem Dowling.

Q. When did you ask for your child back? A. I gave them a period of six months.

Q. When did you actually ask to have your child back? A. After the six months were over.

Q. Was your child returned to you? A. No.

Q. Was there any kind of hearing held? [181] A. No. No kind. No definite answer. It was just absolutely refused.

Q. Were you advised that you could go to a lawyer to ask for the return of your child?

Mr. Bienstock: Your Honor, at this point I must object. • • •

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[182] Judge Lombard: Has the child been returned yet?

Ms. Gans: No, the child has not been returned.

• • •

Judge Lombard: There is no dispute about those issues. There is no need to take the time of the Court and all the other people here assembled to develop matters as to which there is no dispute.

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Colloquy

[183] Ms. Gans: May I just, with all due respect to the Court, simply state on the record that I feel that I have a right, that I am entitled on behalf of my clients who are the parents of children in foster care and that would be the story of their individual case.

There has been much talk about abandonment, you see. My clients placed their children in foster care because of illness or other crises. I want the testimony on that. I wanted testimony on parents who maintain regular contact when they have their children in foster care. • • •

• • •

[184] I also wanted to offer evidence of a mother and child who have been reunited after foster care placement and talk about their adjustment, because the suggestion implicit in plaintiffs' case is that after one year the relationship between the foster parents and child is so intense that it must not be broken, that that is the relationship which now should be preserved and I thought it would be appropriate to hear from a mother and child who have been reunited after a separation to see how they are doing.